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ABSTRACT

This practicum was designed to improve the delivery of special education services to all students with special needs in a rural Canadian school district. The goal was for teachers, as members of program planning teams, to design and implement individual program plans for exceptional students according to district special education policy guidelines. An orientation day for all district administrators and three school-based inservice workshops to each of nine school staffs were provided. Central office personnel were actively involved throughout the process. Assistance was given throughout the year by visiting classes, coaching, participating in individual program planning meetings upon request, providing and sharing materials, and assisting teachers to draw upon their collective expertise. The results of the practicum were positive. During the implementation process, 118 teachers in 9 schools identified 212 students with special needs and participated in the design of individual program plans to meet the educational needs of 158 of those students. The extensive appendices include a teacher survey, a teacher referral form, memos concerning the training sessions, assignments related to the training, evaluations, and samples of teachers' work. (Author/KS)

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Improving the Delivery of Rural School District Special Education Services

by

Janice Dunn

Cluster 31

A Practicum 11 Report Presented to the Ed.D. Program in
Early and Middle Childhood in Partial Fulfillment of the
Requirements for the Degree of Doctor of Education

NOVA UNIVERSITY

1991

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PRACTICUM APPROVAL SHEET

This practicum took place as described.

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11 May '91
Date

This practicum report was submitted by Janice Dunn under the direction of the advisor listed below. It was submitted to the Ed.D. Program in Early and Middle Childhood and approved in partial fulfillment of the requirements for the degree of Doctor of Education at Nova University.

Approved:

5-20-91
Date of Final Approval of Report

Richard Goldman
Richard Goldman, Ph.D., Advisor

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Abstract

Improving the Delivery of Rural School District Special Education Services. Dunn, Janice E., 1991: Practicum Report. Nova University. Ed. D. Program in Early and Middle Childhood. Descriptors: Program Improvement/ Program Development/ Individualized Education Programs/ Problem Solving/ Participative Decision Making/ Special Education Teachers/ Teachers/ Outcomes of Education/ Teaching methods/ Educational Strategies/ Elementary Education/ Elementary Secondary Education/ Rural Education/ Delivery Systems.

This practicum was designed to improve the delivery of special education services to all district students with special needs. The goal was that teachers, as members of program planning teams, would design and implement individual program plans to meet the needs of exceptional students, according to district special education policy guidelines.

The writer provided an orientation day for all district administrators and three school-based inservice workshops to each of nine school staffs. Central office personnel were actively involved throughout the process. The writer assisted throughout the year by visiting classes, coaching, participating in individual program planning meetings upon request, providing/sharing materials and assisting teachers to draw upon their collective expertise.

The results of the practicum were positive. During the implementation process, one hundred eighteen teachers in nine schools identified two hundred twelve students with special needs and participated in the design of individual program plans to meet the educational needs of one hundred fifty-eight of those students.

* * * * * * * *

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Chapter 1

INTRODUCTION

Description of the Work Setting and Community

The work setting of the writer is a rural Canadian school district of approximately six thousand square kilometres. All of the communities in the district are situated along the coast of the Atlantic Ocean. The largest community has a population of approximately five thousand while the smallest has a population of less than five hundred.

The school district maintains twenty-one schools, a central office complex and resource centre. More than half the schools are small with populations of less than three hundred twenty-five students. Several of these schools are located in tiny, isolated communities.

Most of the communities in which the schools are located are involved in seasonal primary production - fishing and farming. The community in which the central office is located is primarily involved in the service industry.

Description of Participants

For this practicum, the persons involved were to have been eighty-four teachers in seven schools, however two high schools with an additional thirty-four teachers were added at the request of their respective administrators and the administration of the school district office. One of the writer's colleagues with a neighbouring board asked if he and the staff of eleven teachers from one of his schools might attend a workshop. After approaching our respective Superintendents, arrangements were make to accomodate everyone. Altogether, one hundred twenty-nine teachers in ten schools participated.

There was a one-room school housing ten pupils in grades K-4, with one teacher; a two-room school with twenty pupils in grades K-4 and two teachers; two K-12 schools - one with 213 pupils and 16 teachers and the other with 194 pupils and 13 teachers; one elementary school with 378 pupils in grades 5-8 and 19 teachers; one primary school with 301 pupils and 16 teachers; one elementary school school with 267 pupils in grades K-8 and 17 teachers plus the eleven teachers from the neighbouring board; and the two high schools - one with 397 students in grades 8-12 and 21 teachers and the other with 233 students in grades 9-12 and 13 teachers.

Although all schools have students with special needs, not all schools have special education teachers.

The Role of the Writer

As the district special services coordinator, the writer:

-is charged with the responsibility for district adherence to provincial special services philosophy:

-monitors, develops, refines and adapts school curricula and special services as directed by assessments of the needs of the school district;

-identifies, diagnoses and assesses curriculum needs;

-initiates, plans, organizes and delivers in-service workshops for programs introduced by the provincial department of education or the school district and ensures that these programs and policies are implemented according to departmental and/or district direction;

-assists teachers in program delivery;

-co-ordinates program offerings at the district, system and school level;

-assists the superintendent in the formulation and modification of district special education policy;

-assists principals and teachers in the identification, location and acquisition of suitable materials for programs;

-evaluates school programs;

-assists as required in the selection and orientation of new special education teachers;

-monitors and supervisors school programs to help ensure that their philosophy is clarified and their objectives achieved through consistent classroom applications;

-assists with the formative evaluation of special education teachers;

-is responsible for ensuring that transportation is provided for students with special needs.

-chairs the district special education advisory committee.

-liaises with other agencies regarding supportive services to students.

Chapter II

STUDY OF THE PROBLEM

Problem Description

The problem was that teachers who have exceptional students in their classes were not following provincial/district special education policy guidelines.

Since 1970, in this province, when the first special education teachers were hired, students with special needs have been deemed to be the responsibility of special education teachers. The students were segregated in special education classrooms and were rarely, if ever, integrated with their age peers.

Historically, in this province, teachers have been in sole charge of their classrooms. As most schools in the district are single-stream schools in small communities, teachers have not had access to colleagues teaching the same grade with whom to consult and communicate. Thus, teachers in this district were not accustomed to working as members of teams or to having another teacher (the special education teacher) working with them in their classrooms. They had been resistant to this "intrusion" into their domain.

The writer had been informed by teachers that: they did not feel competent to teach exceptional students; they did not feel that parents would be willing to participate; they felt that students who cannot handle the course content should not be in their classes, and so on....

Following the introduction of the Provincial Special Education Policy document three years ago, an administrator at the school district office sent a memorandum to schools indicating that exceptional children, with the exception of those in classes for the Trainably Mentally Handicapped, now called "children with challenging needs", should be taken out of segregated special education classes and mainstreamed. At that time, all exceptional children in "regular special education classes" were mainstreamed without appropriate support services in place and without input from classroom teachers.

The assumption, following the mainstreaming directive, was that schools would implement the Provincial Special Education Policy. Since that time the writer has chaired a committee which developed a district special education policy. Components of both policies include modification of teaching strategies by classroom teachers and the inclusion of both classroom teacher and the child's parents in program planning teams. Following the development of a program for an exceptional student, it is deemed the responsibility of the team to determine the most enhancing educational environment for program delivery.

The writer had visited all twenty-one schools in the district. As of March, 1990, there were no individual program planning (IPP) teams in schools. With the exception of some programs designed exclusively by the special education teacher, exceptional students did not have individual program plans.

The writer had attempted to deal with the situation during the past two years by providing six schools, selected at the district office level with two workshop days each, following a provincial model. The topics covered included an overview of the provincial policy document, systemmatic observation, modification of teaching strategies, exceptionalities and the program planning team process.

This type of in-service workshop had not resulted in a greater degree of special education policy implementation in the six selected schools as compared to the other schools in the district.

Additionally, the writer had assisted the district's forty-six special education teachers by providing them with materials, suggestions for program modifications, modelling teaching practices etc.

Regular classroom teachers had not been involved in designing and implementing individual program plans to meet the educational needs of exceptional students. Many teachers expected that exceptional students would master the same content as their class peers.

The problem was that teachers were not meeting the needs of their exceptional students according to district special education policy guidelines.

Problem Documentation

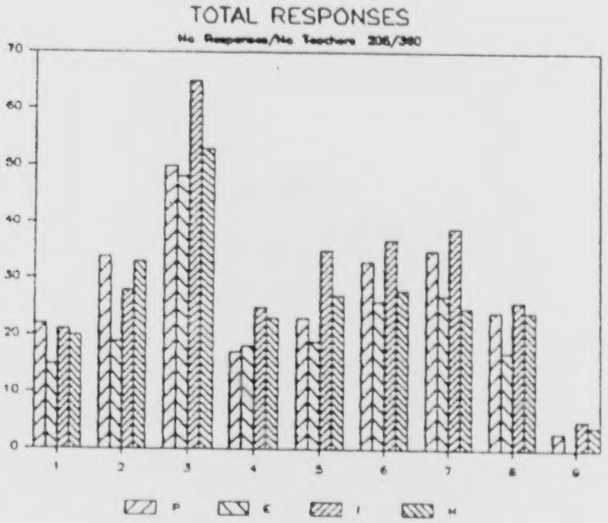
Prior to writing the district's special education policy document, the Special Education Advisory Committee, chaired by the writer, surveyed all three hundred sixty teachers in the district. On the survey (Appendix A) teachers were asked the following: (1) to indicate the grades in which they worked; (2) to check topics (from components of the special education policy listed) which they would like to see covered in an in-service workshop designed for their school; and (3) to indicate any problems/concerns they would like to have addressed.

The two hundred five teachers who responded to the survey indicated by their answers that they were not familiar with and were not following the special education policy guidelines. They requested information on all components of special program delivery (see Table 1). The major area of concern for most teachers involved modification of teaching strategies to meet the needs of exceptional students.

Of the teachers who responded to question three on the survey, fourteen areas of concern were noted (see Table 2). The largest numbers of teachers expressed concerns regarding placement of students, team teaching, integration (mainstreaming) of exceptional students in regular classes, evaluation methods and standards for exceptional students and appropriate programming.

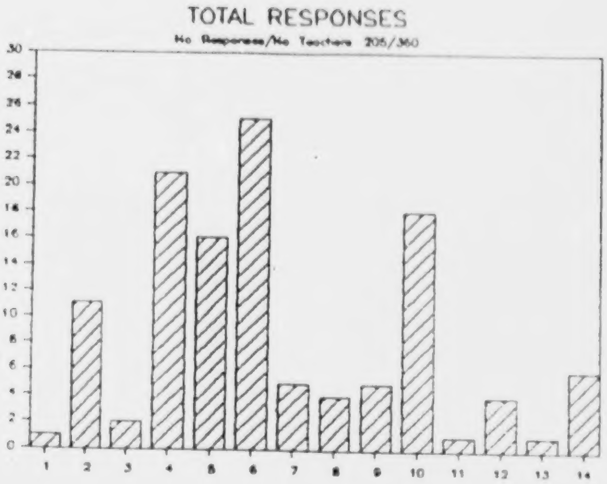
The writer visited all schools in the district during

Spring, 1990, and confirmed that special education policy guidelines were not being followed. There were no program planning teams in schools - although all schools in the district had identified exceptional students. The writer's observations in all district schools confirmed that students did not have individual program plans and alternate programs were not being implemented for exceptional students by classroom teachers.



TOTAL RESPONSES NO. RESPONSES/NO. TEACHERS		205/360	P	E	I	H
1	Special Education Policy		22	15	21	20
2	Screening and Identification		34	19	28	33
3	Modification of Teaching Strategies		50	48	65	53
4	Referral Process		17	18	25	23
5	Collecting/Evaluating Information		23	19	35	27
6	Developing an I.P.P.		33	26	37	28
7	Implementation of I.P.P.		35	27	39	25
8	Monitoring and Review		24	17	26	24
9	Other		3	0	5	4

Table 1. Graphic representation of topics selected from the list provided, by primary, elementary, intermediate and high school teachers.



		TOTAL
1	Gifted	1
2	Student Placement	11
3	Post Secondary	2
4	Team Teaching	21
5	Integration	16
6	Evaluation	25
7	Centralized Collection of Support Materials	5
8	Role of Special Education Teacher	4
9	Role of Classroom Teacher	5
10	Appropriate Programming	18
11	Credit Courses and Public Examinations	1
12	Classroom Space	4
13	Teacher Stress	1
14	Teacher Attitude	6

Table 2. Problems, issues and concerns to be addressed, as selected by teachers surveyed.

Causative Analysis

Among the causes for the problem was the perception by teachers that exceptional students were not their responsibilities. Since 1970, when the first special education teachers were hired in this province, the common practice had been to send children who could not keep up with the group and/or "trouble makers" to the special education teacher. The special education teacher's classroom was usually a room separated from the other classes (eg. in a portable, a room off the gym). Those students who, in the opinion of the classroom teacher, could not be taught in the regular classroom spent their educational careers in the segregated special education class. The writer has not been able to document any child, in the past, who has graduated as a student in a segregated special education class nor any student who, after several years in a segregated special education class, was returned to the regular classroom.

Another cause which contributed to the problem was the requirement for a totally new and different approach by teachers. They were being asked to work as members of teams, to consult with colleagues and work cooperatively with parents in designing educational programs. The approach suggested was not a part of the pre-service training the teachers had received at the province's only university.

Following discussions with teachers, the writer concluded that they were hesitant to work as members of program planning teams, mainly, because they were not accustomed to such practices. Traditionally, teachers had worked in isolation. As many of the district schools are small schools, there is only one class at each grade level or in some instances several multi-grade classes. Teachers had not been provided with the opportunity to share expertise with their colleagues at the school and/or district level.

Teachers, in general, had not been exposed to the rationale for the changes that had taken place in special education, and had not had the opportunity to react to them. They were not a part of the change process.

The directive for mainstreaming came from an administrator at the district office. Teachers who believed that they were not responsible for exceptional students were suddenly confronted with them in their classrooms without any consultation. They had not participated in an in-service workshop which would have provided information, considered their reactions and provided follow-up.

Other factors to be considered were teachers' beliefs about their teaching. Many teachers had indicated to the writer that they felt they did not have the skills to teach exceptional students. They apparently believed that special education teachers had a mysterious "bag of tricks". While some teachers may have a limited repetoire, the writer had observed that most teachers used a variety of teaching strategies. The writer had observed teaching expertise across staffs, however, teachers had not indicated that they believed that they and their colleagues shared collectively all the necessary teaching expertise.

Relationship of the Problem to the Literature

Sarason and Doris (1979) indicate that mentally handicapped persons in need of special education have been segregated from the nineteenth century to the present day. Although "no one consciously sought to create conditions that were sadistic or evil ... time and again the results were inhumane" (p. 18). Policy makers and others [educators] were convinced they were doing the right thing.

Wolfensberger (1972) suggests that man's behavior is mainly determined by his ideologies - "a combination of beliefs, attitudes and interpretations of reality that are derived from one's own experiences, one's knowledge of what are presumed to be facts and above all one's values" (p.7).

Winzer, Rogow and David (1987) state that society's attitude toward the handicapped has always been "complex, fashioned by the prevailing culture, religion, government and economic condition" (p. 70).

Kirk and Gallagher (1983) discuss education as a reflection of the political philosophy of the society. They indicate that the term "exceptional" and the concept of educating each child to the limits of his or her ability are relatively new.

There have been a number of stages in the development of attitudes toward handicapped persons in the nineteenth and twentieth centuries. In the early 1800's, they were neglected and mistreated - "stored away in poor houses or other charitable centres" (Kirk and Gallagher, 1983, p.6).

Around the 1820's, asylums and residential facilities were established to train and protect the inhabitants for their entire lifespan (Taylor and Searl, 1987, p.7; Kirk and Gallagher, 1983, p.6; Winzer et al., 1987, p. 70).

In the United States, the first day class for deaf children was established in a public school in 1869 in Boston (Kirk and Gallagher, 1983). Winzer et al. (1987) indicate that special classes and special schools became prevalent in Canada between 1900 and 1950. In the writer's province, provision for hiring special education teachers to establish special education classes did not occur until 1970.

From the late 1800's until the 1930's, the eugenics movement was quite prevalent. Eugenists claimed that is was futile to educate the handicapped, most especially, the "feebleminded". Based on questionable studies and I.Q. tests, they claimed that "the handicapped genetically polluted society and should be segregated or sterilized" (Winzer et al., 1987, p.95; Taylor and Searl, 1987, p.13).

As the eugenics scare began to fade, special segregated classes developed to meet the needs of exceptional children. Those persons recommended for residential care were thought to be "better off being with their own kind" (Sarason, 1982, p. 236). Recent news reports, from Romania, showing the residential facilities for mentally handicapped persons, can give us an indication of the cruel realities of the bedlam that storehousing with "their own kind" creates.

Sarason (1982) indicates that the fact that more individuals [in North America] were not in segregated facilities, "said more about economics than it did society's view about where they 'really' belonged" (p.236).

In the United States in the 1950's and 1960's there was an "explosion of provisions for the handicapped, spearheaded by state and federal legislation and appropriations" (Kirk and Gallagher, 1983, p.8). In the late 1960's, the influence of very powerful lobby groups in Canada "prevailed over the traditional practice of segregation of school and living for the handicapped" (Kepala, French and Johnson, 1987, p. 424).

As early as 1962, in the United States, it was suggested by Johnson as quoted by Gall (1987) that adequate objective evidence to support the effectiveness of special classes was difficult to obtain. He suggested, "it is indeed paradoxical that mentally handicapped children, having teachers specially trained, having more money per capita spent on their education and being enrolled in classes with fewer children and a program designed to provide for their needs, are not accomplishing more" (Gall, 1987, p. 448; Wolfensberger, 1972, p. 10).

In the late 1960's, Winzer et al. (1987) indicate that special education was "exclusionary rather than remedial...cast a stigma on exceptional children... [who were] provided low quality education [in] inferior facilities ... [by] untrained teachers.... The children performed no better in special classes" (p.89).

In 1975, public law 94-142 was passed by Congress in the United States. It has exerted a profound influence on special education in that it introduced the principle of normalization and insisted that children be taught in the least restrictive environment possible (Karagianis and Nesbit, 1981).

Section 15 of the Canadian Charter of Rights and Freedoms states that "Every individual is equal before and under the law without discrimination based on race, national or ethnic origen, colour, religion, sex, age or mental or physical disability." The educational implication of this statement is that "all individuals have a right to equivalent educational provisions" (Kepala et al., 1987, p.422).

In the writer's province, it was not until 1970 that legislation was passed which made school attendance compulsory (Kepala et al., 1987, p.429). Prior to passage of that legislation exceptional students could be and were denied access to an education. A teacher aide recently relayed to the writer the story of her daughter who is now twenty-five years old. When she was five years old, the usual school entry age in this province, her mother took her to school. The mother was told to take her daughter home as she was uneducable. Sarason (1982) indicates that in those days schools existed "primarily for the intellectual-educational development of 'normal' children -

whoever/whatever interferred with that could not be justified. This moral stance was considered right and proper - parents had no say" (p.238).

In the writer's province, in 1987, the provincial department of education released a somewhat flawed special education policy document (i.e. it does not contain a workable appeals procedure). School districts have been assigned the task of developing their own district policies.

Although there are areas of difficulty, special education concepts, such as mainstreaming, least restrictive environment, individual program plans, etc., have evolved in the United States and in several provinces of Canada to the the point where they have a history and in most cases are accepted practice. As the writer's province is quite isolated and these concepts are relatively new, attitudes prevail which are not conducive to acceptance of such a radical change.

Sarason (1982), writing of teachers' attitudes in the late seventies, could have been describing the attitudes of some of the teachers of the writer's school district today. Many have suggested to the writer very similar sentiments to those which follow: "...the interests of those who lead 'productive' lives justify segregating those who are unproductive" (Sarason, 1982, p.262). "...The needs of our society require capable citizens, especially highly capable ones, and it would be socially self-defeating to dilute their education in any way" (Sarason, 1982, p.263).

Jamieson (1984) indicates that general assessments of the attitudes of teachers "show that teachers are not enthusiastic about working with handicapped learners and they have many concerns about the practicality of mainstreaming" (p.212).

Jones and Guskin (1984) indicate that "fear or dislike of contact with handicapped persons would lead to resistance to mainstreaming and normalization" (p.2). The fears expressed by professional educators may be realistic. They would have to cope with new responsibilities in conjunction with those they already have. They are concerned about the complications brought on by the integration of a handicapped person into a regular classroom (Jones and Guskin, 1984, p.2).

The waves of change in the United States impacted on changes in some of Canada's provinces and territories. Those waves are just now beginning to reach the shores of the writer's province.

Lewthwaite (1980), as quoted by Gall (1987), gives an indication of a probable cause for such a progression of change towards equality for exceptional children. In the disparities between American and Canadian cultures, he notes that the basic committments of the governments are: "to life, liberty and the pursuit of happiness in the United States; and peace, order and good government in Canada" (p.451). In the United States rights are confirmed through litigation. In Canada, a royal commission is appointed to discuss an issue, usually for several years.

The writer's province has had a long, harsh history of settlement as a colony prior to becoming a province of Canada in 1949. It is poor, with many isolated communities. As a group, the population tends to be somewhat conservative.

The province passed legislation regarding compulsory education in 1970. The first special education classes in schools were created in 1970 with the passage of the Schools Act. The province has mandatory legislation which provides "that a school board shall not refuse children admission to any school under its control unless the child can be accomodated in another school more reasonably available to him" (Poirier, Goguen and Leslie, 1988, p. 38). The Newfoundland Schools Act (1970, s.12, a.1) further states "that every school shall organize the means of instructing children who for any physical or mental reason require special classes" (Poirier et al., 1988, p.38).

Teachers, for the first time, had to grapple with "unteachables - taking educational funds away from regular students" (personal communication, high school principal, May, 1990). Now, teachers have a special education policy which indicates that they accept students, particularly those with mild handicapping conditions, into their classrooms!

Many of the teachers, in the writer's district, had and some continue to have extreme difficulty dealing with the expectations for change expressed in the provincial and district special education policy documents.

Crocker, Charney and Chiu (1984) indicate that in North America "strategy, policies and goals are determined at the upper echelons of the organization.... The decision to implement an innovation is relatively rapid; the change process itself often meets with considerable resistance" (p.76).

The final draft of the provincial special education policy document was released in 1987 with a directive that it would be implemented province-wide within five years. The provincial department of education chose, in the first three years to select a pilot school in each of five of the provinces thirty-five school districts. Personnel from the department of education provided those schools with inservice workshop days. Department personnel have decided to withdraw from this type of inservice as the schools became "too dependent". They have had varying degrees of success with this approach in the individual schools without much carry-over at the district level. The remaining school districts, of which the writer's is one, were left to their own devices. The writer, who has been designated responsible for the implementation of this policy, originally followed the provincial informational inservice model with six district schools. However, this had not brought about any significant degree of change as compared to other schools in the district.

Leithwood and Fullen (1984) suggest the following propositions about change which probably explain why the provincial informational inservice model did not work:

> Significant classroom and school change is a time consuming process: it also requires constant attention and problem solving.
> The initial stages of any significant change always create anxiety and uncertainty.
> On-going technical assistance and psychological support are crucial if anxiety is to be coped with. Most change involves learning new skills through practice and feedback - it is incremental and developmental.
>
> A fundamental requirement for long-term successful change is for people to understand the underlying conception and rationale: they must know why the new way works better.
> Organizational conditions within the school (peer norms, adminstrative leadership) and in relation to the school (for example external adminstrative support and technical help) have a critical bearing on the success of the change process.
> Successful change involves pressure, but it is a gradually acquired pressure through interaction with peers and other technical and administrative leaders. It is not imposed pressure, mandated by

authority (Leithwood and Fullen, 1984, p.7).

The terms "top-down" (Futrell, 1989) and "outside-in" (Hunt, 1987a) describe implementation models in which "experts" present the solutions to teachers. Fullen (1985) suggests that change happens at the individual level when teachers go through the process of altering their ways of "thinking and doing" (p.396). It is a process of "developing new skills and, above all, of finding meaning and satisfaction in new ways of doing things" (Fullen, 1985, p. 396).

Fullen (1985) suggests that anyone interested in bringing about change must "understand the psychological dynamics and interactions occurring between individuals in schools ... before we can decide which strategies are most effective" (p.396).

According to Miller and Seller (1985), teachers' choices with regard to change are affected by the social system of the school. Teachers are expected to exhibit certain behaviors within the system and to play a number of roles. "These expectations, along with the extent to which a change is intended to alter classroom practice, and the amount of autonomy a teacher has in [making changes] are factors that affect implementation" (Miller and Seller, 1985, p. 232).

Miller and Seller (1985) suggest that there are many kinds of change. Some changes are slow and occur naturally over time while a more dramatic kind of change "comes as a result of new knowledge" (p. 233). In the writer's province the introduction of a special education policy would fall in the latter catagory. Change does not occur simply because new knowledge emerges. "There must also be a recognized need for a change. If teachers do not recognize this need, the intended change will be a nonevent" (Miller and Seller, 1985, p. 233).

Rogers (1962), as quoted by Miller and Seller (1985), identified five major characteristics that will affect whether a change will be adopted:

> Relative advantage: the degree to which the change is perceived to be an improvement over present practice.
>
> Compatability: The congruity between the values implied by the change and those values present among the people who must implement the change.
>
> Complexity: The ease with which the change can be understood and then applied.
>
> Divisibility: Some programs can be implemented by breaking them into smaller units.
>
> Communicability: The ease with which the effects of the change can be shared with others (Miller and Seller, 1985, p. 234).

Teachers who were merely sent a directive to implement a special education policy have certainly not been provided with an opportunity to make relative comparisons.

Fullen's (1982) research has suggested that teachers use three main criteria to assess the possibilities of a change effort:

> Does the change potentially address a need? Will students be interested? Will they learn?
> How clear is the change in terms of what the teacher will have to do?
> How will it affect the teacher personally in terms of time, energy, new skill, sense of excitement and competence, and interference with existing priorities (Fullen, 1982, p. 113)?

Teachers in the writer's district were not provided the opportunity to pursue these questions during an implementation process.

The process of change is multidimensional. Miller and Seiler (1985) suggest that "individual teachers will implement a new program in ways that are consistent with their own beliefs and practices" (p. 239). For some, change will be a natural progression while for others it will be painful and complex (Miller and Seller, 1985, p.239).

Fullen (1982) indicates that implementation of change does not necessarily mean that real change will occur. He describes two types of apparent change which, in fact, are not the desired change at all. "False clarity" occurs when persons exhibit only the superficial appearance of change. "Painful unclarity is experienced when unclear innovations are attempted under conditions which do not support the development of the subjective meaning of the change (Fullen, 1982, p. 28).

The directive which mandated mainstreaming in the writer's district led to, in some instances "false clarity" and in others "painful unclarity" until everything went back to "normal".

In addition to the personal world of the teacher, Miller and Seller (1985) suggest that change is affected by the "collective reality of the school" (p. 240). They suggest that the ecology of a school may either support or impede a climate conducive to mutual adaption:

> Individual teachers may or may not be encouraged to adopt innovations; they may or may not receive assistance in their implementation attempts; time may or may not be made available to teachers to confer with colleagues about what they are doing in the classroom (Miller and Seller, 1985, p. 243).

In the past, in the writer's district, the ecology of schools tended to be an impediment rather than a support for implementation.

Aquila and Galovic (1988) suggest that it requires more than knowledge of the benefits of a new program for teachers to make it part of their repetoire. Change involves risk-taking. The teachers involved in change, both those accepting of the change and those resistant to the change process, require on-going support and encouragement.

Welsh (1989) suggests that the difficulties in the United States with the acceptance of the changes wrought by PL 94-142 were the result of imposing those on an existing culture. He indicates that "the apparent myopic administrative act of legislating change resulted in imposing change on a culture that was not adequately prepared for that change, thus creating a less-than-receptive (and perhaps restrictive) environment in which to integrate handicapped students" (Welsh, 1989, p.537).

Legislators of the writer's province should have been able to evaluate the difficulties involved in implementing PL 94-142 and use that information to their advantage. However, they did not pursue that course of action and attempted instead to impose change on a culture that was not prepared for the change.

Miller and Lieberman (1988), as quoted by Welsh (1989), suggest that to bring about change in a school one must understand:

> the task of teaching; the roles of the administrators and teachers; conflicts over authority; emerging teacher leadership and the press for professionalism; the requirements of time, resources and personnel; the beliefs system of participants; the motivations of involvement; the socio-cultural dimensions of change; the individual and group meanings that are attached to schools and change, and the individual and group

> histories that accompany any improvement (Welsh, 1989, p.538).

That is certainly contradictory to the practice of mandating change through legislation or by edict.

Lambert (1988) suggests that the "outside-in" model may, in fact decrease the possibility of change occurring. She states that by using that model "we have perpetuated the paternalistic system that reinforces schooling as usual .... When teachers have organized, it has been to build a wall to keep out paternalistic control..." (Lambert, 1988, p.666).

Gall (1987) reports that even Canadian bureaucrats are resistant to mandated change. A report of the Organization for Economic Cooperation and Development (OCED) states that "Canadian bureaucrats are on the front line of resistance to change .... Hardly an area [exists] in which lack of co-operation among the various levels of government and between professionals and parents, produces such harmful results as in the case of special needs students" (Gall, 1987, p. 451).

Sarason (1982) suggests that "passing laws is far easier than getting them implemented with both their spirit and their letter" (p. 249). He continues by suggesting that although "team work" can be mandated, "unless the culture of the setting contains ingredients favourable to such functioning, it is not likely to become manifest' (Sarason, 1982, p. 254).

Fullen (1982) states that "the strategies commonly used by promoters of changes, whether they be legislators, adminstrators or other teachers, frequently do not work because they are derived from a world or from premises different from that of the teachers" (p.115). Those who mandate change in the writer's district, do not have to implement the change.

McDaniel (1989) indicates that "top-down" reforms overlook the concerns and needs of those involved in implementation of the the reforms. He suggests that "top-down reforms tend to be short-term and cosmetic in nature, superficial rather than substantive.... People will learn what they need to learn; they will solve problems that they themselves have identified.... People tend to resist solutions imposed from above" (McDaniel, 1989, p.17).

Lortie, (1975) as quoted by Fullen (1982), indicates: "partly because of the physical isolation and partly because of the norms of not sharing, observing and discussing each other's work, teachers do not develop a common technical culture" (p.108).

For the most part, North American schools have been organized for centuries around single-teacher classrooms. Such concepts as team teaching, open classrooms, etc. are considered to be innovative (Lortie, 1975).

"Teachers are primarily with small children and there is very little contact with other teachers or any other adult.... One of the consequences is that teachers are psychologically alone even though they are in a densly populated setting" (Sarason, 1982, p. 133).

Miller and Seller (1985) describe a teacher's day as one in which "they must teach, monitor student behavior, complete clerical tasks and talk to parents. They do most of this in the confines of their classroom with little opportunity to interact with their colleagues" (p. 232).

Schon (1983) suggests that a teacher's isolation works against problem solving. "She needs to communicate her private puzzles and insights, to test them against the views of her peers" (p. 333).

Coupled with the norms of not sharing each other's work is the lack of opportunity in most schools in the writer's district. Of the twenty-one schools in the district only three elementary schools and two high schools have more than one class at each grade level. The sharing of materials and ideas for teaching concepts is even more difficult when a teacher does not have a colleague who teaches the same grade within thirty miles.

Added to this difficulty is the lack of pre-service training at the only university in the writer's province. Classroom teachers are not being prepared to deal with exceptional students in their classrooms. Sarason (1982) indicates that this is common practice: "...there was nothing in the training of the regular classroom teacher that gave him or her a sense of understanding a child who was labelled 'special'" (p. 237).

Lortie (1975) indicates that "teaching has not been subjected to the sustained, empirical and practice-oriented inquiry into problems and alternatives which we find in other university-based professions" (p.69). The result is that new teachers have to start out without the benefit of all the collective knowledge of his/her colleagues regarding "solutions and alternative approaches to recurring practical problems" (Lortie, 1975, p.70).

Lambert (1988) suggests that it is the responsibility of teachers to "enculturate new teachers in the positive and self-directing norms of teaching" (p.666). At the same time she acknowledges that teachers have been taught that "valid knowledge about teaching lies outside the school and 'comes in' through staff development" (p.666).

Birch and Elliott (1987), in describing the professional socialization of teachers indicate that it is a product of "internalizing shared meanings and values, the common role expectations and patterns of belief and behavior of teachers, or at least of teachers in those institutions the neophyte has experienced" (p. 489). As it is highly unlikely that a teacher in the writer's district has experienced schooling in a classroom with handicapped peers, their role expectations would not include having to teach students outside of the norm. Feiman-Nemser and Buchman's (1989) research indicates that "elementary education majors ...expect to teach children like themselves, in schools that resemble the ones they attended" (p.367).

Sackney (1987) suggests that the pre-service education of young teachers does not prepare them for the realities of the post-mainstreaming era. Young teachers frequently complain that "theory and practice are not the same....and too many professors are out of touch with the field" (Sackney, 1987, p. 517).

Not only young teachers, but all teachers "are isolated from their colleagues and from adults in general" (Miller and Seller, 1985, p. 236). The result of this isolation is that teachers feel that "professionally, they are on their own; they must solve their own problems and learn to cope with the classroom by themselves. If a change is introduced into the program, implementation is also viewed as an individual activity" (p.236).

Miller and Seller (1985) indicate that loneliness leads to another effect - "feelings of inadequacy and uncertainty" (p. 236).

Hunt (1987b) suggests that:

> Most initiatives to produce change in education assume that knowledge about teaching and learning is *outside* the classroom and the school and that it resides in the theory and research of educational experts. This false assumption is the major reason why such efforts fail. Knowledge about teaching and learning is not *out there* but *in here* - in the heads, hearts and actions of classroom teachers (p.1).

Although the opinion has been expressed by many that teachers have the knowledge and expertise to deal with any change. Miller and Seller (1985) suggest that in any large-scale change [for example the implementation of a district special education policy] teacher isolation works against implementation. "There is a need for teachers to interact with one another as they learn new skills and try to apply them. This need is even more important if the innovation involves a change in orientation" (p. 245).

The literature does indeed provide conclusive evidence that:

-Historically, the segregation of exceptional students has been a long accepted practice.

-Although change is mandated, as has been the case in the writer's province, teachers who are not part of the process will resist change.

-Teachers who are expected to share expertise and problem solving strategies will not do so by edict but must be provided with the opportunity to develop those cooperative skills.

Chapter III

ANTICIPATED OUTCOMES AND EVALUATION INSTRUMENTS

Goals and Expectations

The following goal was projected for this practicum:

Teachers, as members of program planning teams, will design and implement individual program plans to meet the needs of exceptional students, according to district special education policy guidelines.

Objectives

The following objectives were projected for this practicum:

Following practicum implementation, teachers in seven schools which had the highest response rate on the writer's survey, and those in the two high schools which asked to be a part of the process, will follow district special education policy guidelines to identify students requiring special services as measured by the appropriately completed referral forms (Appendix B).

Following practicum implementation, teachers, in the seven selected schools and in the two high schools, following special education policy guidelines, will participate as members of program planning teams in designing individual program plans to meet the needs of exceptional students as measured by the writer's review of all individual program plans in each school.

Following practicum implementation, teachers will implement their student's individual program plans in designated responsibility areas as measured by the writer's observations.

Measurement of Objectives

During implementation, teachers were provided with a rationale, model for comparison and assistance in completing referral forms during practice sessions. They were asked to follow the district special education policy guidelines during the implementaion period and to submit copies of completed referral forms to the writer.

During the implementation process each teacher in each school was asked to participate, as a member of a program planning team for at least one exceptional student. The writer was available to assist with the pre-program planning stage. The writer met periodically with teams during the practicum implementation to assist with program design, acquisition of appropriate materials, suggestions, recommendations, etc. The writer reviewed all program plans.

The writer visited classes, examined program plan records, met with teachers, principals, parents and students, to observe program plans in action and the results being attained. In addition, the writer requested written feedback from teacher participants regarding their progress and any problems/issues/concerns which they may have had.

A journal was kept during the practicum experience to record unanticipated events and/or outcomes.

This practicum process was not amenable to most forms of statistical tests. Professional judgements concerning acceptable levels of performance were determined through examination of individual program plans and observation of the implementation process.

Chapter IV

SOLUTION STRATEGY

Discussion and Evaluation of Solutions

According to Fullen (1982) the implementation of educational change involves "change in practice" (p.30). He suggests that there are at least three components or dimensions in implementing any new program or policy:

> -the possible use of new or revised materials (direct instructional resources such as curriculum materials or technologies)
>
> -the possible use of new teaching approaches (i.e. new teaching strategies or activities)
>
> -the possible alteration of beliefs (e.g. pedagogical assumptions and theories underlying particular new policies or programs) (Fullen, 1982, p. 30).

Following further study, he added a fourth component - "possible changes in structure" (Fullen, 1983, p.217).

To achieve the goal of this practicum it was necessary to bring about multi-dimensional change. Implementation of a district special education policy involved the use of new materials and teaching approaches and the alteration of beliefs and structures.

Leithwood (1982) suggests that "implementation is a process of behavioral change, in directions suggested by the innovation, occurring in stages, over time if obstacles to such growth are overcome" (p. 254).

Miller and Seller (1985) suggest that there are three quite different approaches to implementation commonly used in the field of education. In the oldest approach, implementation is defined as an event rather than a process. "This event occurs, as a professional development activity when a new program document is distributed to teachers" (Miller and Seller, 1985, p. 246). Explanations, descriptions and demonstrations are usually provided during inservice sessions and "when the sessions have been completed, the teachers are then expected to teach the new program" (p. 246).

Sharma (1990) described the inservice approach for implementation defined as an "event" as similar to servicing a cow. "The teaching staff are herded into a meeting, penned by contract language.... A visiting expert appeared producing a projector and transparencies from the trunk of his car... then proceeded to insert an hour and a half of details into us.... We didn't get to join in the act...it just happened" (p.1).

The methodology described is very similar to the provincial department of education implementation model for the special education policy. In the districts where departmental personnel provided in-service workshops, they arrived with overheads and binders, gave a presentation and then left the school on its own to "implement". It is obvious from the lack of change at the school level, that this model was not particularly successful.

The second approach described by Miller and Seller (1985) emphasizes "the process of interactions between the curriculum developers and the teachers" (p. 246). Developers use input from teachers to "design new approaches, examine new resources or integrate new content into the existing program" (p. 246). The developer adjusts the program following field trial input from teachers and when the program is completed "implementation is considered to be completed" (p. 247).

A third common view of implementation perceives it as a "separate component in the curriculum cycle" (p. 247). Following the development and adoption of a new program which requires resources and alternate teaching methodologies, "planning requires careful examination of alternatives, resources and strategies. Those best suited are described, listed and presented to teachers in an introductory workshop. When the planning is finished, implementation is complete" (p. 247).

The three implementation models described are thing-centred not human-centred. Miller and Seller's (1985) definition addresses both the "thing" and the "person". They define implementation as a "process that leads to the shared ownership of the innovation" (p. 247). They suggest that during this process interactive change occurs with the teacher acquiring some of the ownership for the change and the developer relinquishing some of the control. Miller and

Seller (1985) continue by suggesting that change extends beyond individual classrooms to include the social system of the school and the parents of the students. Miller and Seller (1985) indicate that implementation can be accomplished with "systemmatic planning and an interdependent perspective" (p. 248).

Among the conclusions reached by Showers. Joyce and Bennett (1987). in their synthesis of research on staff development. were the following:

> - Almost all teachers can take useful information back to their classrooms when training includes four parts: (1) presentation of theory (2) demonstration of the new strategy (3) initial practice in the workshop and (4) prompt feedback about their efforts.
> - Teachers are likely to keep and use new strategies and concepts if they receive coaching (either expert or peer) while they are trying the new ideas in their classrooms.
> - It doesn't seem to matter where and when training is held.... What does matter is training design.
> - Similarly. the effects of training do not depend on whether teachers organize and direct the program...(Showers. Joyce and Bennet. 1987.p. 79).

Their conclusions would suggest that the "one-shot" or even the "two shot" workshop format primarily in vogue in education in the writer's province would not be successful.

Leithwood and Fullen (1984) suggest that school districts involved in the implementation of innovations "would be well advised to offer short courses to principals" (p. 8) which would give them an understanding of the innovation and help them "to identify the types of administrative actions that should be taken to support the implementation and later institutionalization" (p.8).

Aquila and Galovic (1988) state that the principal of the school is the key to change. They suggest that the method for change "must be compatible with the values, attitudes and skills of the staff members" (p.52).

The acceptance of change requires risk taking and a level of committment by teachers. They suggest that the "change agent principal must provide constant support and encouragement, both to those risking as well as to those apathetic, resistant or threatened by change" (p. 52).

Fullen (1985) indicates that despite "a great deal of very good research on factors related to school improvement, we do not have much specific knowledge about how and why improvements occur" (p. 392).

Huberman (1981), as quoted by Fullen (1983), states that two factors responsible for the implementation of a program in his study were: "the quality and amount of technical assistance and sustained central office and building level support" (p.393). Huberman's conclusions appear to confirm those suggested by Showers et al., (1987).

Leithwood and Fullen (1984) and Aquila and Galovic (1988), previously cited.

Huberman (1981), as quoted by Fullen (1983), described the initial implementation period as one of "high anxiety and confusion" (p. 393). He concluded that "changes in attitudes, beliefs and understanding tend to follow rather than precede changes in behavior" (p. 393).

Guskey (1985) concluded that "significant change in the beliefs and attitudes of teachers is contingent upon evidence of change in the learning outcomes of students" (p. 58).

Stallings and Mohlman, (1981) as quoted by Fullen (1983), concluded that "teachers changed their behavior more in schools where the principal was supportive and where the school policy was clear, consistently enforced and arrived at collaboratively" (p. 394).

Little's (1981) study of six schools described by Fullen (1983) concluded that school improvement is achieved when:

> Teachers engage in frequent, continuous and increasingly concrete and precise talk about teaching practice...
> Teachers and administrators frequently observe each other teaching [and provide feedback]...
> Teachers and administrators plan, design, research, evaluate, and prepare teaching materials together...(p.395).

Again. it is apparent that both pressure and support for change are requirements for change to take place.

Huberman and Crandall. (1983) as quoted by Fullen (1985). recommend that central office personnel must be "actively involved (directly or indirectly) *throughout* the process. not just at the initial or final (evaluation) phases" (p.406).

Crocker et al.. (1984). in describing the implementation process for the use of Quality Circles in business. suggest that: (1) the committment of senior management is crucial. (2) resources must be deployed. (3) the results of discussions must be shared with all involved and (4) changes suggested by the quality circles must be implemented in order to attain the continued support of personnel involved (p.89). The processes suggested by Crocker et al. (1984) are very similar to those advocated by Aquila and Galovic (1988) and Fullen (1985; 1983). cited previously.

Hunt (1987a). citing the work of Berman and McLaughlin (1978). compares what he calls "outside-in" strategies and "inside-out" strategies. He indicates that "outside in" strategies are ineffective in the implementation process. They include: "Packaged management approaches. one shot pre-implementation training. pay for training. formal evaluation and outside consultants" (p. 128). The following strategies which he refers to as "inside-out". Hunt (1987a) claims are supportive of implementation particularly when "applied in concert" (p.128). They include:

> ...concrete, teacher-specific and extended training, classroom assistance from project or district staff, teacher observation of other similar projects in other classrooms, regular project meetings that focus on particular problems, teacher participation in project decisions, local materials development, principal participation in training" (Hunt, 1987a, p.128).

Welsh (1989) indicates that teacher receptivity and teacher concerns must be taken into account when planning and implementing change. Purkey and Smith (1985), cited by Welsh (1989), suggest that the change process follows four global steps:

> (1) Change should be at the individual building level in which the culture is the target of change.
>
> (2) The staff should examine the existing conditions and cultural variables...
>
> (3) Technical assistance that facilitates collaboration and participation on the part of the staff is also a critical element...
>
> (4) An inverted pyramid maximizes the input and participation of the community and members of the school culture at the local level (Welsh, 1989, p.539).

Lambert (1988) suggests that professional development, unlike staff development, is a "cultural construct" (p.668). She indicates that professional development requires "access to multiple learning opportunities within an environment that fosters learning" (Lambert, 1988, p.668). She also suggests that facilitators must be available to assist professionals in:

> ...inquiring into and reflecting on practice, bringing to the surface and sharing knowledge of the craft, identifying and creating options, leading and working collaboratively, learning about the state-of-the-art in the profession and designing school and district systems that open opportunities and encourage participation" (Lambert, 1988, p.668).

Patterson and Miklos (1987) indicate that significant professional development will occur when teachers attend to the analysis of teacher practice. In order for teachers to become reflective in their work, they must have practice sessions in identifying their needs, determining courses of action and evaluating outcomes. They suggest that teachers need to engage in "research while teaching" (Patterson and Miklos, 1987, p. 533).

Jamison (1984) cites lack of knowledge concerning the role and function of special educators and lack of exposure to handicapped students as affecting levels of teacher acceptance for special needs children. She cites Finn (1980) and Singleton (1978) who report that inservice paired with exposure and inservice paired with direct assistance produced significant positive attitudes towards mainstreaming. She cites also, availability of resources and support as affecting teachers' willingness to accept a child with special needs in the classroom (Jamieson, 1984).

Hunt (1989) suggests that teachers' energy and renewal are almost never considered when planning professional development or program initiation. He suggests that such initiatives fail because they are planned on logical, rational grounds ignoring the personal energy of participants in a creative problem-solving process. He indicates that experienced knowledge includes " (1) self-awareness (identifying your own learning style), (2) implicit theories (e.g. perceptions of students, concepts of intention and available actions) and (3) personal images" (Hunt, 1989, p.24).

Hunt's (1989) research has led him to conclude that: "(1) when we bring out our personal images, we connect with our personal energy. (2) When we share our personal images, we release our personal energy. (3) When we apply our personal images to concerns, we transform our energy into action" (p.24).

Fullen (1982), following a review of inservice education, summarized the reasons for failure. They include:

1. One shot workshops are widespread but ineffective.

2. Topics are frequently selected by people other than those for whom the inservice is intended.
3. Follow-up support for ideas and practices introduced in inservice programs occurs in only a very small minority of cases.
4. Follow-up evaluation occurs infrequently.
5. Inservice programs rarely address individual needs and concerns.
6. The majority of programs involve teachers from many different schools and/or school districts but there is no recognition of the differential impact of positive and negative factors within the systems to which they must return.
7. There is a profound lack of any conceptual basis in the planning and implementing of in-service programs that would ensure their effectiveness (Fullen, 1982, p.263).

It is certainly thought provoking to note that educators do not make use of their knowledge of how learning takes place, when professional development implementation plans are put in place.

Fullen (1982) indicates that the process of change is a "highly personal experience - each and every one of the teachers who will be affected by change must have the opportunity to work through this experience in a way in which the rewards at least equal the cost" (p. 113).

For change to occur successfully "the innovation has to represent a real need ... and the school district, the schools and the external system have to support the implementation in various ways" (Fullen, 1982, p. 264).

Through his research, Fullen (1982) concluded that professional development is central to the process of change. His findings include:

> (1) that professional development must focus on a need;
>
> (2) that the emphasis on inservice education on the part of the school district in relation to principals and teachers is essential;
>
> (3) that teachers must have the opportunity to interact with each other, share ideas, and help one another and must have some external assistance from the principal, district consultant, or others outside the school...
>
> The extent to which the relatively formal (e.g. workshops) and informal (e.g. sharing ideas and help) professional development activities succeed is the extent to which change succeeds (Fullen, 1982, p. 264).

Description of Selected Solution

There are many models for staff development, professional development and inservice. The solution preferred by the writer was to develop an inservice program based on proven approaches gleaned from the literature and the needs of teachers as determined by the May, 1989, survey, teachers'requests and their feedback. Lortie (1975) states "each teacher's preference should be honoured" (p. 235).

Seven schools which had the highest rate of response on the survey were chosen in consultation with the District Superintendent and Assistant Superintendent (Curriculum and Instruction), during May, 1990. To provide opportunities for interaction with colleagues, it was agreed that the teachers from the one and two-room schools would travel to the primary school. The two high schools, which will be amalgamating in September, 1992 and which have a large number of exceptional students were added in November, 1990, following their repeated requests and consultation with district administrators.

The Superintendent had agreed to allow each of the teachers three workshop days - each separated by several weeks. Schools were closed for students during those days.

Report of the Action Taken

Aquila and Galovic (1988) suggest that a supportive principal is the key to change at the school level. Therefore, the writer provided an orientation day each for all district school principals, all district vice-principals and three days for all district special education teachers so that they would know what was being planned and have the opportunity to participate in some of the activities and provide feedback to the writer.

Following discussions with the District Superintendent and Assistant Superintendent, it was decided that the three groups would attend workshops on three different days. This was deemed to be the most suitable arrangement as the two administrators would not be away from the school at the same time. From previous experience working with groups of teachers, it was felt that smaller numbers would be more appropriate for the type of activities planned.

The District Superintendent, Assistant Superintendent and all curriculum area coordinators agreed to attend and participate with the principals and vice-principals groups and with at least one school level group. The coordinators agreed to assist with in-school follow-up and particularly as consultants to Individual Program Planning teams upon request. The writer pursued and achieved an agreement with colleagues for this level of central office support following the recommendations of Huberman and Crandell (1983), as quoted by Fullen (1985). They indicate "that central office personnel must be actively involved (directly or indirectly) *throughout* the process..." (p.406). Following negotiations with district office secretarial staff, due to their collective agreement considerations, the writer agreed to assist with preparation of materials for teachers and transcription of the teachers' workshop-generated writing, as they deemed necessary. In order to have materials ready for teachers on time, the writer has had to adopt the typist's role on several occasions.

The format as indicated previously involved three days at each school. Purkey and Smith (1985), cited by Welsh (1989), suggest that "change should be at the individual building level in which the culture is the target of change" (p. 539). The workshop days were interspersed with the writer's visits and opportunities were provided for individual and small group discussions. The period between workshop days allowed time for teachers to reflect upon the process and the content, to question, to provide feedback and for the writer's follow-up support. Fullen (1982) suggests that "teachers must have the opportunity to interact with each other, share ideas and help one another and must have some external assistance..." (p. 264).

Approximately one week prior to Day 1 the writer met briefly with each staff to present the results of the May, 1990 survey completed by that staff and to provide small groups (designated by the writer by grade level assignment) with an article pertaining to some aspect of special education. The writer asked the teachers to read the article and to be prepared to discuss it in a small group and do a five minute presentation on the contents during Day 1 (Appendix C). The evaluation from the first school indicated that it would have been helpful in facilitating their presentations to have had the questions for Assignment 2 (Appendix D) provided with the articles. The writer provided the questions with the articles to succeeding schools. Showers et al., (1987) indicate that it is of benefit to teachers to be provided with "theory.... demonstration.... practice.... and feedback" (p.79). The articles provided the teachers with exposure to theory.

The writer had asked the District Superintendent to provide the opening remarks on Day 1 for each group. He agreed to do so at each location. In his remarks, the Superintendent indicated his support for the district's special education policy and described for teachers his experience as a principal twenty years previously, being assigned his first special education teacher. He indicated that at the time he thought it was the greatest thing to happen in education in the province. All children with special needs would go to the special education room where they would be taught. Over time he came to the conclusion that what was being done to children was nothing short of criminal. They had been deprived of access to an appropriate eduation and now, "we have the opportunity to do something about it". The Superintendent's ten minute address set the tone for the workshop and indicated that there is on-going support for the initiative at the district central office. The writer then provided a rationale and objectives for the day's activities (Appendix E).

Following Hunt's (1989) suggestion that "teachers energy and renewal are almost never considered " (p.24), the writer asked all teachers to participate in activities to raise self-awareness (Appendix F). This personal writing was anonymous and was synthesized and presented to the group by the writer's district office colleagues at the end of the day. Prior to the second workshop day, the teachers' writings were transcribed and copies were prepared to share with the group (Appendix G). Fullen (1982) suggests the importance of sharing ideas (p. 264).

Assignment 1 (Appendix F) involved writing a metaphor "My teaching is..." , following the example of Hunt (1987a), with some initial coaching from the writer. Kliebard (1980) states that "metaphors represent a fundamental way that human beings have evolved to express and organize their world, especially the world that lies beyond immediate perception" (p. 36).

The next activity (Appendix F) involved identification of teachers' learning styles and preferred teaching styles, following initial coaching by the writer. Showers et al. (1987) suggest that coaching is an important component when teachers are trying new ideas (p. 79). As indicated previously the writer's colleagues presented a synthesis of teachers' writings at the end of Day 1 and transcribed copies were prepared prior to Day 2 (see Appendix G).

Following a break, the writer, who had provided a copy of the district special education policy to each teacher, gave an overview of the policy statements and allowed time for questions and discussion.

The staffs were then divided into small groups to prepare their five minute oral presentations (Assignment 2) on the previously assigned article, using the questions assigned by the writer as a guide (Appendix D). A spokesperson selected by each group reported to the larger group. Fullen (1982) suggests that "teachers must have the opportunity to interact with each other, share ideas..."(p. 264).

Assignment 3 (Appendix H) was a problem solving activity. Each teacher in a small group was asked to select at least three problems/concerns related to implementation of the special education policy in his/her school. The members of the group were asked to provide proposed solutions for each other's problems. They discussed the possibilities and probabilities, practicality and workability of the solutions generated within the small groups. The group was then asked to select three - four of the "best" solutions to selected problems to share with the larger group. In many instances, across groups, similar problems had been generated but somewhat different solutions had been proposed. This led, on occasion, to heated but friendly debates with eventual large group acceptance of a proposed solution. Aquila and Galovic (1988) indicate that proposed changes must be "compatible with the values, attitudes and skills of staff members" (p. 52). Crocker et al. (1984) suggest that "the results of discussions must be shared with all involved" (p. 89). Transcribed copies of teachers problems and proposed solutions were prepared prior to Day 2 (see Appendix I).

The writer asked participants to complete an evaluation anonymously, (Appendix J) and to make suggestions for Day 2. Crocker et al. (1984) indicate that suggestions "must be implemented in order to attain the continued support of personnel involved" (p. 89). In addition, the writer visited each school as often as possible.

As the the writer had already received some suggestions in the survey, two topics which were covered on Day 2 for all schools were Modification of Teaching Strategies and Goals and Objectives. This was done in a presentation format with examples. Showers et al. (1987) have suggested that teachers can benefit from presentation of theory in conjunction with demonstration, initial practice and prompt feedback (p. 79).

Approximately two weeks prior to Day 2, the writer sent a memorandum to each teacher asking him/her to do some research on one student with special needs. Following feedback from the first school, the writer changed the memorandum to indicate that teachers could work on their own or with a colleague/colleagues (Appendix K). They were asked to bring to the workshop any materials which would be of use in developing programs to meet the needs of their special student.

On Day 2, the writer presented her objectives for the day (Appendix L) to the group and attended to any suggestions provided in the evaluation for Day 1. For example, some staffs wanted a general overview of exceptionalities while others wanted specific information on learning disabilities, etc. Following the writer's presentation on Modification of Teaching Strategies and Goals/Objectives, the teachers were asked to work in small groups, developing goals, objectives and teaching strategies (Appendix M) to meet the needs of the student(s) selected by each group. The writer's central office colleagues (curriculum area coordinators) circulated to the different groups to provide any assistance required. Fullen (1982) indicates the importance of coaching and central office support. Showers et al. (1987) indicate the importance of initial practice and prompt feedback. At the end of Day 2, a representative of each group was asked to report to the larger group on their activities of the day. The writer transcribed some samples of their work to share prior to Day 3 (Appendix N).

Following Day 2, teachers were asked to complete an evaluation anonymously, (Appendix O) and send to the writer further suggestions and feedback. The writer visited schools and provided materials and assistance to teachers.

Prior to Day 3, the writer asked teachers, in self-selected small groups at each school to choose a student or several students with special needs and to prepare a summary of information to bring to the workshop (Appendix P).

On Day 3, the writer attended to any suggestions and questions from the evaluations of Day 2. As many of the teachers had indicated that they would like to see an

Individual Program Planning Team meeting, the writer videotaped a simulated team meeting with the aid of a classroom teacher, special education teacher, school principal and a guidance counsellor who portrayed the role of the parent. After watching the forty minute tape, most teachers indicated that they would feel comfortable participating in a meeting with parents. Many teachers had indicated that they would like time during the day to develop program plans for their students. The remainder of the workshop day was used for that purpose. The writer and central office colleagues assisted the groups of teachers in designing programs to meet the needs of their exceptional students.

It was an implicit objective of the writer that, prior to Day 3, formal Individual Program Planning Teams would have been set up at the schools for some of the students and initial meetings with parents would have been held. Some teachers were able to utilize the day to work on formal Individual Program Plans (IPP's). Other teachers worked on the Pre-IPP stages.

At the end of Day 3, a representative of each group was asked to share, with the rest of the staff, the day's accomplishments for their group. The teachers were asked to complete an anonymous evaluation and to make suggestions for future inservice workshops (Appendix Q).

A popular incidental activity took place on each of the three days. Over the past ten years, the writer has been preparing and collecting materials related to program development for students with special needs. On each of the days, a display of some of the materials was provided. Many of the teachers borrowed, copied, used and/or shared the writer's materials.

The writer assisted throughout the year by visiting classes, coaching, participating in Individual Program Planning meetings upon request, providing/sharing materials and assisting teachers to draw upon their collective expertise, following Fullen's (1982) suggestion that "teachers must have the opportunity to interact with each other, share ideas and help one another, and must have some external assistance from the principal, district consultant, or others outside the school..." (p. 264).

Chapter V

RESULTS, CONCLUSIONS AND RECOMMENDATIONS

Results

Teachers in the seven schools which had the highest response rate on the writer's survey and in the two high schools did follow district special education policy guidelines to identify students requiring special services as measured by the appropriately completed referrel forms (Appendix B).

Each teacher, on his/her own or with a colleague(s) referred at least one student.

During the referral process the writer received many telephone calls from teachers who could find no evidence in student files to support their claims that a student was exceptional. This was of grave concern, particularly to teachers at the junior high and high school levels who had students in their classes reading at a primer level. It had been a known "fact" that the students had problems yet there was nothing written in the files to indicate the "facts".

Several teachers, at the high school level in particular, were quite surprised to learn during the referral process, that some of the students in difficulty did not learn best by listening. As the teachers had been using, primarily, a lecture method, they concluded that their own teaching style might have contributed to the students' difficulties.

Several teachers indicated, quite angrily, that if they had had the referral information on their students at the beginning of the school year, they would have taught their courses differently.

Not only did the teachers complete referral forms for two hundred twelve exceptional students but, incidently, they discovered how their teaching styles might be affecting learning outcomes in the classroom.

Awareness of learning styles and alternate teaching methodologies and the connection between them is something that teachers indicated they had not previously discussed with their colleagues. During the process of completing referrals which made them aware of their students' skills and areas of weakness, they became more aware of themselves.

Teachers in the seven selected schools and the two high schools, following special education policy guidelines, have participated and/or are participating, as members of program planning teams in designing individual program plans to meet the needs of their exceptional students, to varying degrees, as measured by the writers' review of all individual program plans in each school. The writer continues to participate in the design of program plans, as requested, in all nine schools.

Many teachers indicated on Day 2 and Day 3 evaluations (Appendices O and Q) that working on the program plans for their students was the most valuable part of the day.

Although, for some teachers, individual program planning was a new and somewhat difficult process, they indicated that it was time well spent. As more and more teachers work through the whole process, they are indicating positive changes in their students. As Guskey (1985) had indicated that "significant change in the beliefs and attitudes of teachers is contingent upon evidence of change in the learning outcomes of students" (p. 58), the writer welcomed the news of positive student changes. For example, several students who had previously been at risk of dropping out, recently indicated that they intend to remain in school until they graduate "even if it takes five years to complete high school" (personal communication, students, April 23, 1991).

RESULTS

School	Teachers	Identified Students	Numbers with IPPs
CV Primary	16	25	19
One-room school	1	1	1
Two-room school	2	2	2
CV Elementary	19	44	29
SU All-Grade	16	31	22
SC All-Grade	13	19	19
CT Elementary	17	43	38
B High School	21	23	11
CT High School	13	24	17
TOTALS	118	212	158

Table 3. Numbers of teachers, students referred and students with Individual Program Plans, by school.

The teachers at CV Primary had identified twenty-five students with special needs. Nineteen students have Individual Program Plans while the remaining seven students have plans in various stages of development. The school administrator has indicated that all meetings with parents will have been concluded by May, 1991 and all students IPPs will be complete.

The teacher at the one-room school has designed a program plan for one of her students with the assistance of two of her colleagues from CV Primary and the writer.

The two teachers at the two-room school have designed Individual Program Plans for two of their students. They have invited the children's parents to the school, modelled teaching methods for them and involved the parents in home reading programs for their children.

The teachers at CV Elementary have identified forty-four students with special needs. They have developed Individual Program Plans for twenty-nine of those students and intend to complete the remaining fifteen by the end of the current school year.

The teachers at SU All-Grade school have identified thirty-one exceptional students. They have developed IPPs for twenty-two students. One somewhat traditional special education teacher at the school is having some difficulty with the design process, however, the school administrator has indicated that he hopes that all exceptional students will have IPPs by year-end.

At SC All-Grade school, teachers have completed program plans for all students with special needs.

The teachers at CT Elementary have identified forty-three students with special needs. With a total school population of two hundred sixty-one students, the number of students with special needs is higher than average. Traditionally, the area of the district in which the school is located has had very high drop-out rates. Until recently, when a new school was opened, the elementary children were housed in three old wooden buildings in different parts of the community. The staff and students have made many adjustments in recent years. They have completed thirty-eight IPPs with the remaining five nearing completion.

The staffs at the two high schools were to have had individual inservice workshops, however, outside intervention in the form of a blizzard required the cancellation of Day 1 for B High School. The next day the staff at CT High School was scheduled to have their Day 1 inservice workshop. Following consultation with the two principals, it was agreed that the two staffs would be combined for that day. As the two staffs will be combined when a new school opens in 1992, it was an excellent opportunity for them to get to know each other. The day worked so well that the two staffs asked to work together again during the Day 2 and Day 3 inservice workshops.

The teachers at B High School had identified twenty-three students with special needs. Program plans are in progress for eleven students with several nearing completion. The writer is scheduled to meet with a group of teachers to design a program plan for one severely learning-disabled student. The principal has arranged for the teachers to be released from teaching duties for that afternoon.

The teachers at CT High School had identified twenty-four students with special needs. They are working on program plans for seventeen students at the present time.

Teachers in the seven selected schools and the two high schools who have participated or who are participating in the design of Individual Program Plans for their students are implementing those program plans in designated responsibility areas as measured by the writer's observations.

As a component of her role as special services coordinator, the writer has observed all of the one hundred eighteen teachers, involved in practicum implementation, in their classrooms working with students for at least one class period. During practicum implementation, many teachers have been observed for several periods; some for a half-day and some for longer periods of time. The writer has discussed with her district office colleagues the teaching practices of those teachers whom they have observed.

All teachers appeared to be willing to accomodate minor adjustments such as oral testing of a student with a learning disability, if the special education teacher assisted with the process. Most teachers, when they became aware of the needs of their students, were able to adjust teaching methodology somewhat to accomodate those students.

All teachers have participated in the design of alternate materials during the inservice workshop days and some have worked with the special education teacher in their classrooms.

The writer has offered to assist some teachers who were somewhat resistant, by teaching with them for a day. One eighth grade teacher who had not had a prior team-teaching experience indicated to the writer, at the end of the day, that it had been the most stressful morning he had had since his first day of teaching fifteen years previously. However, by the end of the day, alternate teaching methods to meet the needs of several students were being discussed and an invitation for the writer to return had been issued. Three very traditional teachers are having difficulty modifying their "standards". The writer and her central office colleagues will continue to work with those teachers.

Wolfensberger (1972) proposed the radical notion that mentally handicapped persons should not be warehoused. He promoted deinstitutionalization, however, he was aware that the motives of those who would keep mentally handicapped persons locked away were prompted by the values of the society in which they lived. He suggested that behavior toward others is determined by "... a combination of beliefs, attitudes and interpretations of reality that are derived from one's own experiences, one's knowledge of what are presumed to be facts and above all one's values" (Wolfensberger, 1972, p. 7).

As the teachers in the writer's district had not, as children, attended classes with exceptional students, had not, in most instances, taken classes at university to become aware of the needs of exceptional students and in fact assumed that they would "... teach children like themselves..." (Feiman-Nemser and Buchman, 1989, p. 367), it was not surprising that some had and some still have varying degrees of difficulty accepting the changes required to implement the district special education policy.

Schlechty (1991) indicates that five functions must be fulfilled for change to occur:

> Firstly, the nature of the change must be conceptualized. Second, people who are going to be called on to support the change but who were not involved in the conceptualization process must be made aware of the change. Third, feedback from those who were not involved in the initial conceptualization but who will be called on for support must be solicited and where possible and appropriate incorporated into the change process. Fourth, activity to implement the change must

> begin and people must be motivated to act in directions indicated by the change. Fifth, a system of ongoing support and training must be provided for those who are being asked to support the change" (Schlechty, 1991, p. 97-98).

Through the implementation process, the writer has provided a medium through which most of the teachers involved have been able to "safely" work through experiences, discuss beliefs, attitudes and "facts" and determine with a team of their colleagues how they will provide for their exceptional students.

On evaluations received following Day 1, Day 2 and Day 3 inservice workshops, most teachers indicated that the "hands-on", practical sessions involving development of programs for their own students were the most valuable part of the day. Many teachers indicated that follow-up visits, sharing materials, reflecting on teaching and learning with a team of colleagues were very positive experiences.

Schlechty (1991) indicates that change requires people "to take risks and break habits. It causes discomfort and uncertainty. It creates needs as well as satisfies them. When undergoing changes, people need more support and security than when their world is stable ..." (Schlechty, 1991, p. 95). It is evident from the observations of the writer and her colleagues that teachers, in the seven selected schools and the two high schools, are working through the process of change. They are taking risks.

demanding materials, services and supports. With continued support, they will continue to create change.

Conclusions

Teachers who have the opportunity to become familiar with the rationale for change, who are coached through the process and given the kinds of supports they request are more amenable to change.

Teachers, at the school level, who are given the opportunity to interact with each other, to share ideas and expertise and who are provided with the opportunity to help each other solve problems and the materials and assistance they request, can bring about very large changes in a relatively short period of time. During the implementation process, one hundred eighteen teachers in nine schools identified two hundred twelve students with special needs and participated in the design of Individual Program Plans to meet the educational needs of one hundred fifty-eight of those students.

Recommendations

Teachers who will be asked to implement change, must be involved in the change process.

Teachers involved with the implementation of change must be provided with on-going supports.

Dissemination

The Director and Assistant Director of the Division of Special Services at the Provincial Department of Education attended the Day 1 workshop at CT Elementary at the writer's invitation. Following the workshop, the writer was asked to give a presentation at the Annual Provincial Conference of Special Education Coordinators. The presentation was well received by the writer's colleagues, many of whom asked for copies of materials and additional information.

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APPENDICES

APPENDIX A

TEACHER SURVEY

TEACHER SURVEY

1. Please check the grade levels in which you work:

____ K - 3

____ 4 - 6

____ 7 - 9

____10 - 12

____ other

Comment:

2. What topics would you like to have covered in an in-service designed for your school?

____ Special Education Policy

Comments:

____ Screening and Identification

Comments:

____ Modification of Teaching Strategies

Comments:

____ Referral Process

Comments:

____ Collecting/Evaluating Information

Comments:

____ Development of Individual Program Plan (IPP)

Comments:

____ Implementation of Individual Program Plan (IPP)

Comments:

____ Monitoring and Review of Individual Program Plan

Comments:

____ Other topics and/or additional comments:

3. Please list any problems/concerns you would like to have addressed (eg. exceptional student's placement. team teaching. evaluation. etc.. etc.)

APPENDIX B

REFERRAL FORM

REFERRAL TO PROGRAM PLANNING TEAM

Perceived problem(s)

Summary of Systematic Observation

Record of Home Contact(s)

Date(s) Comments

Summary of Teaching Strategies Used

Strategies	Results	Comments

Consultation(s)

Date	Person	Comments

APPENDIX C

DAY 1 MEMO

MEMO

To: Principal and Staff

From: Janice Dunn, Special Services Program Coordinator

Re: Assignment for Day 1

Date: September 11, 1990

On September 27, 1990, there will be an in-service workshop at your school.

On that day you will receive a copy of the revised district special education policy.

We will take time to reflect and to discuss problems/issues/concerns you wish to address with regard to implementation of the special education policy and attempt to generate some practical, workable solutions.

I am enclosing an article related to some aspect of educating exceptional students. I would ask you to:

1. Read the article prior to the workshop using the enclosed questions to guide your reading.
2. Bring the article to the workshop with you.

You will be assigned to a small discussion group regarding your article and will be asked to present details to the rest of your colleagues during the workshop.

APPENDIX D

ASSIGNMENT 2 QUESTIONS

Assignment 2

You were asked to read an article prior to this in-service relating to some aspect of the the delivery of special education to students. In your group, (see attached list) use the questions concerning your article as a guide to prepare a short report for the rest of your colleagues.

Assignment 2 Questions

Bachor, D. and Crealock, C. (1986) Secondary school issues. In Instructional strategies for students with special needs. Scarborough: Prentice-Hall Canada, Inc.

Who are the students who are likely to require special services at the secondary level?

The authors suggest many problems related to the delivery of service to students requiring special education. Summarize.

The authors suggest several models for the delivery of service at the high school level. Briefly describe.

Which of these models could be put in place in your school? Elaborate.

Assignment 2 Questions

Stainback, W., Stainback, S., Courtnage, L. and Jaben, T. (1985, October). Facilitating the mainstream by modifying the mainstream. Exceptional children, 52(2), 144-152.

What do the authors mean by "mildly handicapped students"?

What are the assumptions upon which the traditional graded structure is based?

Discuss the changes suggested by the authors.

How could those changes be incorporated in the Newfoundland setting? - in your school?

Assignment 2 Questions

Reynolds, M., Wang, M. and Walberg, H. (1987, February). The necessary restructuring of special and regular education. Exceptional children. 53(5), 391-398.

Compare/contrast the special education system in the United States, as described by the authors, with our own.

The authors indicate project needs for special services. What is their rationale for such projections?

How do the authors explain the decrease in the numbers of children labeled Mildly Mentally Retarded and the increase in the numbers of children labeled Learning Disabled?

How do the authors propose to meet the needs of exceptional children?

We would have less difficulty, in this district, implementing the authors' proposals than they would have in the United States. Why?

Assignment 2 Questions

Gartner, A. and Lipsky, D. (1987, November). Beyond special education: Toward a quality system for all students. Harvard educational review, 57(4), 367-395.

What was Public Law 94-142 designed to do?

Which components of the law have been successfully implemented? Why?

All facets of this law have not been successfully implemented. Why? Elaborate.

In what ways do the authors suggest the educational system should be improved?

How could we make it work in this province?

APPENDIX E

DAY 1 OBJECTIVES

OBJECTIVES - DAY 1

Teachers will have the opportunity to reflect and to share with colleagues.

Teachers will gain an understanding of the rationale, model and procedures of the district special education policy.

Teachers will be become acquainted with some of the literature on special education implementation and have an opportunity to react to it.

Teachers will discuss problems/issues/concerns they have with implementation of the special education policy in their school and will generate possible solutions.

APPENDIX F

ASSIGNMENT 1

Assignment 1

"Every person is like every other person in some ways.
Every person is like some other person in some ways.
Every person is like no other person in some ways."
(Hunt, 1987a, p.37)

We rarely have the opportunity to reflect upon who we are, what we do, how we do, why we do...

In this first assignment, you are being asked to reflect upon you - the teacher, and you - the learner.

MY TEACHING IS ...

Think about a positive experience you have had learning to do something ...

Why was this a positive experience?

How did you learn?

A child is confronted with the totally new concept of "twiblers". How would you teach this concept?

APPENDIX G

SAMPLES OF TEACHERS' WRITINGS

METAPHORS

A Sampling of Teachers' Writings

MY TEACHING IS ... a circus act. Some parts of the performance are polished and well-rounded and have the audience on its feet. Others are boring and bring yawns. There is always a constant demand for something more and new acts are knocking on the door requesting an audience. The performances have to be cajoled and coerced. Sometimes they will bring tears of joy and other times frustration and anger. (SU All-Grade School)

MY TEACHING IS ... like a mother hen. I probably cluck, cluck a lot and tut tut a lot and the chicks ruffle my feathers a lot but I want those little chicks to grow up the right way. I want them to learn the manners and rules of the barnyard. I want them to be educated in every possible way. I bring them seeds and grains to eat and water to drink. Some are hungry and gobble it up. Some are anorexic and feed only meagerly and others I have to drag to the trough. It's tough being a mother hen! (CV Elementary)

MY TEACHING IS ... a ship and I am its captain - guiding all aboard to a safe port, and striving to ensure that none fall overboard (drop outs) along the way. (SC All-Grade)

MY TEACHING IS ... like putting on wallpaper. I love to paper. When I see a room that needs improvement, I can't wait to start papering even though I can never envision the finished product. When I am entrusted with a child whose skills and strategy need improvement, I love the challenge. When I put on the first strip of wallpaper, I always stand back and look at it. I try to view it from an angle outside of the room that just shows me the newly papered part and from there I decide if I'm on the right track or not. I feel immense satisfaction if the first strip is just right, the same as I do if the first step in teaching the child is right. If its wrong I have to start over - the same with a child. With every successive wallpaper strip, I see the room transforming as I would like a child to be transformed. If I go terribly, terribly wrong, at any point, no matter how much I have put into the project, I must be willing to change. At times, I get frustrated and wonder whatever possessed me to start papering this room - why not just a sloppy paint job - but at the end !!!!!

(Special Education Teachers)

Learning Experiences and Strategies

A Summary

Positive Learning Experiences

- welding
- plaster a room
- build a balcony
- learned to use a computer
- renovations on a house
- parallel and angle parking
- knit
- salmon fishing
- drive
- computer studies
- mechanical repairs
- learning French

How did you learn?

- observation - others
- trial and error
- demonstration
- peer group discussion and acceptance
- guided learning
- asking questions
- practice
- example
- experiment
- success, reinforcement and accomplishment
- telling and doing (SC All-Grade School - 13 teachers)

Positive Learning Experiences

- to use a Word Processor
- to use a weight machine
- to drive a standard car
- to use a computer
- to sew
- to become a mother
- to swim
- to knit

- to master downhill skiing
- to ride a two-wheel bike
- to make Ukrainian Easter Eggs
- to clean and gut a fish
- to make bread
- to water ski
- to windsurf
- to drive a car

How did you learn?

- hands on
- one on one
- by getting very large bruises
- by being taught by experts
- by interacting with others
- positive feedback
- trial and error
- by observing others

(CT Elementary 17 teachers + 11 teachers from other board)

Positive Learning Experiences

- cross country skiing
- being a father
- building a log cabin
- navigate a boat through rocky waters
- operate a fork lift
- water ski
- making fish flies
- to tie monofiliament line to fishing hooks
- to dissect speciment (rats)
- to swim
- to install a hot water tank
- to change a drive belt on a snowmobile
- setting up a camp
- driving a standard auto
- knit a fish net
- use a computer
- play chess
- jump start a car
- to drive a motorcycle
- to play video games
- to change a tire

- to clear snow out of a driveway the right way

How did you learn?

- trial and error
- imitation
- discussing ideas with others
- watching others - observation
- reading
- listening
- having a model
- repetition - practice
- being motivated in wanting to learn
- frequent feedback
- in a structured environment
- immediate feedback
- being actively involved

(B High School/CT High School - 34 teachers)

Summary of Teaching Strategies

A Sampling

Set up a "twibler" center.

Storytime - Read about "twiblers followed by discussions and questions that would lead into a class produced activity chart. Divide into groups, each group assigned an activity that tells about "twiblers".

Math - word problems featuring "twiblers"

Science - the life cycle of a "twibler"

Writing - "If I was a twibler..."

Art - Paint a "twibler"

Activity - The twibler boardgame

Conclude the "twibler" investigation with a field trip and have parents in to see a fantastic "twibler" demonstration.

(CV Primary - 16 teachers)

- By showing and relating to something they already know
- by modelling
- provide historical background to "twiblers" (i.e. cultural and educational milieu of origen)
- dissect the various aspects of "twibler"
- show a film, followed by a hands-on activity
- develop a curiosity about "twiblers" followed by an activity
- have the students research the concept.

(B High School/CT High School)

APPENDIX H

ASSIGNMENT 3

Assignment 3 - Day 1

On each of the attached sheets, state clearly and concisely one problem/concern related to the implementation of the special education policy in your school.

Pass the sheet to your colleague on your left in your group.

Your colleague on your right will pass a sheet to you. Complete the next section and pass that sheet to your left.

Continue this process until your original sheet returns to you.

Discuss the possibilities and probabilities generated with your group.

Prepare a report to be shared with the larger group.

1. THE PROBLEM IS THAT...

2. Assist your colleague by generating one possible solution to this problem.

PASS TO YOUR LEFT

3. Assist your colleague by generating another possible solution to this problem.

PASS TO YOUR LEFT

4. Assist your colleague by generating another possible solution to this problem.

DISCUSS WITH YOUR COLLEAGUES THE PRACTICALITY AND WORKABILITY OF THE SOLUTIONS WHICH HAVE BEEN GENERATED. PREPARE YOUR GROUP REPORT.

REPORT

Problem	Solutions
1.	
2.	
3.	
4.	

APPENDIX I

SAMPLES OF TEACHERS' PROBLEMS AND SOLUTIONS

Problem Solving Activity

A Sample

Problem	Proposed Solutions
Getting regular classroom teachers to document and try to modify curriculum for the students with special needs. (Special Education Teachers)	- Choose one teacher who does that well. Get him/her to talk to and present other teachers with how he/she modifies his/her curriculum. Maybe they are not aware of how to modify - they may need practical suggestions. - Have regular classroom teachers go into a classroom where a modified program is working effectively. - Take one topic at a time. then work together with the teacher to isolate sub-topics that are most important. Use library resources to accommodate materials to cater to a variety of reading levels. Resource personnel could

	help here. Thus workload per teacher is reduced.
Reluctance on the part of some teachers to work together in team teaching situation. (CT Elementary)	- Set up team teaching situations in the school for other than students with special needs. - Opportunities for teachers to share more ideas with each other. - build in team teaching as part of the school curriculum.
How can "regular" students be educated so that they don't promote the stigma attached to "learning disability"? (CV Elementary)	- The classroom teacher and/or specialists should remind all students that learning disabilities are beyond control of the people who possess them. We all have disabilities of some kind. Being open and frank and attempting to help the learning disabled children to fit in and contribute to class activities may help.

	- Present the view that all students are individuals - everyone is different. Therefore, there is a stigma attached to each one of us - different! - By not teaching the students as if they are "different". Have the students see that you are not treating any students differently, maybe this will carry over to them. Show by example.
Nobody can agree on how to remediate realistically in the classroom with 30 other students without "over-burdening" the classroom teacher. (SU All-Grade)	- Increase the group-activity strategies to include peer tutoring. Increase the number of resource-support teachers to assist the regular classroom teacher. - If there is disagreement then there is need for leadership by the school administration. Get together and brainstorm.

	and select those ideas that should be tried. - Use several periods of small group remediation outside the classroom.
There is a disagreement on the program necessary for a given child with special needs. (SU All-Grade)	- Meeting of the whole IPP team. If all cannot agree, some partial solution may be suggested. - Try a number of tactics to find out which ones work for that child - Evaluate the program. - If this disagreement continues after substantial consultation and conferencing, then the principal must consider the options and make a decision. This decision will be acceptable to some of the members of the IPP team.

APPENDIX J

DAY 1 EVALUATION

Evaluation - Day 1

1. This workshop day was a successful learning experience for me. YES: ___ NO: ___
   Comments:

2. The most valuable part of the workshop day was ...

3. The least valuable part of the workshop day was ...

4. Suggestions with respect to modifications and/or improvements.

5. Suggested follow-up and future activities.

6. Other comments:

7. My overall rating of this workshop:

APPENDIX K

DAY 2 MEMO

MEMO

To: Principal and Staff
From: Janice Dunn, Special Services Program Coordinator
Re: Assignment for Day 2
Date: October 16, 1990

The second day of workshops regarding Special Education Policy implementation will be held on October 23, 1990, at your school. One of the activities on that day will involve initiating the development of an individualized program plan to meet the needs of your exceptional student.

To facilitate that process, I would ask each of you to do the following:

1. On your own or with a colleague select one of your students who has special needs.
2. Prepare a summary of information about your student. Use the enclosed sheets to record your results.

WHAT CAN YOUR STUDENT DO NOW?

-- Bring along samples of his/her work.

-- Write down your observations about how this student learns. For example: coaching, tutoring, on his/her own, with a peer, by being told, by seeing, by manipulating, a combination of...

-- Of the things you have tried, what appears to bring out the best in this student?

-- What does he/she like best about school? hate most?

WHAT DO ASSESSMENTS SAY ABOUT YOUR STUDENT

-- Strengths

-- Weaknesses

-- Levels of skill in particular areas?

-- Recommendations??

WHAT DO YOU WANT TO DO FOR THIS STUDENT?

-- Improve his/her competency in the area of language arts?

-- Increase his/her ability to follow directions?

-- Increase independence?

-- Etc.. Etc.

Bring any materials which may be of use: course objectives, teacher's guides, departmental objectives, themes, etc. We will work in small groups brainstorming, developing and designing to meet the needs of your special student.

What Can Your Student Do Now?

(Summary of Present Level of Performance)

What Do Assessments Say About Your Student?

(Summary of Assessment Data)

What Do You Want To Do For Your Student?

(Long Term Goals)

APPENDIX L

DAY 2 OBJECTIVES

Objectives - Day 2

Teachers will discuss ways and means of meeting the needs of their exceptional students

Teachers will develop programs (with assistance) to meet the needs of their exceptional students

Teachers will have the opportunity to generate a portion of the agenda for follow-up

APPENDIX M

DAY 2 ACTIVITY

EXAMPLE

Goal - ____________ will develop expressive language skills

......

Objectives:

__________ will discuss trips, films, experiments, displays, pictures.....

__________ will relate experiences and retell stories in proper sequence......

__________ will describe and classify objects, pictures, animals and people.......

__________ will participate in puppetry and dramatization.....

__________ will participate in group dictation in the development of language experience charts..........

etc., etc., etc.,

Goal____

____

Objectives:

Teaching strategies, materials, etc.

Evaluation criteria:

APPENDIX N

DAY 2 - SAMPLE OF TEACHERS' WORK

Goals/Objectives/Teaching Strategies

A Sample

Goal:

The student will acquire organizational skills.

Objectives:

1. Student will have an appropriately labelled notebook for each subject and keep them together in a binder.
2. Student will consistently use the correct notebook for each subject area.
3. Student will keep all handouts, worksheets, etc. in individual subject folders (folders to be kept in binder).
4. Student will tidy and reorganize desk at a designated time once a week (also unit folders - see #4).

Teaching Strategies:

1. Teacher model good organizational skills at all times.
2. Peer grouping with a well-organized student to act as a model.
3. Use a point/reward system as a motivator.
4. Home/school communication. Parents and teachers work together to reinforce good organizational skills.
5. Teach organization skills to the whole class.

Evaluation Criteria:

1. Observation by teacher over time - Use of checklist -
2. Student complete his own checklist.

Goal:

Student will develop independent work habits in a variety of situations.

Objectives:

1. Will organize and plan independent study projects by
   - setting his own time frames
   - setting his own objectives
   - setting his own evaluation.

Teaching Strategies:

1. Special education teacher will conference with student two periods per cycle and keep a log of conferences.
2. Classroom teacher will
   - permit student to work at study carrel to decrease distractability.
   - permit student to use computer for projects
   - permit student to use projectors etc. to view information, etc.
   - assist student by recording information on tape. As he is a perfectionist, it takes him a very long time to write.
3. Parental involvement.

Goal:

To improve self-concept.

Objectives:

1. List ways in which one's emotions affect the behavior of self and others.
2. Express ways in which positive attributes make her feel good.
3. Identify statements of praise in everyday activities.
4. List the effects of praise on oneself.

Teaching strategies:

1. Praise successes
2. Small chunks of work: extending deadlines.
3. Immediate reinforcement.
4. Individual conferencing - Explain reasons for doing things in detail. Eg. "Why an assignment was passed back to be redone".
5. Be positive.

Goal:

To improve written language skills in order to receive credit for Language 1102

Objectives:

1. When presented with an agreed-upon topic, the student will be able to generate a list of ten words related to the topic.
2. The student will include eight of the ten words in complete sentences related to the topic.
3. The student will categorize the eight sentences into three or more topic related catagories.
4. The student will arrange sentence categories in sequential order.
5. The student will expand the sentence categories into paragraphs related to the topic.
6. With guidance and assistance, the student will proceed through the steps of the writing process until he completes a final draft.
7. The student will present assignments orally to his peers.

Teaching Strategies:

Differential time concept

film

groups discussions

basic word lists

field trips

guest speakers

outline of writing process (step by step)

APPENDIX O

DAY 2 EVALUATION

Evaluation - Day 2

1. The least valuable part of the workshop day was...

   Comments:

2. The most valuable part of the workshop day was...

   Comments:

3. Suggestions for modifications/improvements:

4. Suggested follow-up and future in-service(s)

APPENDIX P

DAY 3 MEMO

MEMO

To: Principal and Staff

From: Janice Dunn, Special Services Program Coordinator

Re: Assignment for Day 3

Date: December 19, 1990

On January 11, 1991, we will have our third workshop day regarding implementation of the district special education policy.

Prior to that day, on your own or with a colleague, select one or several students who have special needs. On that day you will have the opportunity to:

1. Design objectives and decide teaching strategies, materials etc. to go along with goals decided in an IPP team meeting in which you have participated.
2. Put together all the Pre-IPP materials you will need prior to an Individual Program Planning Team meeting.
3. Work on other related activities/materials etc.

BRING ANY MATERIALS WHICH MAY BE OF USE: COLLECTED DATA ON YOUR STUDENT(S), TEACHER'S GUIDES, THEMES, TEXTS, IPP FORMS, ETC. I WILL BRING MATERIALS TO SHARE AS WELL.

APPENDIX Q

DAY 3 EVALUATION

Evaluation - Day 3

1. The least valuable part of the workshop day was...

   Comments:

2. The most valuable part of the workshop day was...

   Comments:

3. Suggestions for modifications/improvements:

4. Suggestions for follow-up and future in-service:

5. Suggestions for further assistance:

6. Do you feel more capable/competent to deal with the Individual Program Planning process?

   Comments:

18.5

PROVINCE OF NEW BRUNSWICK

IN THE MATTER OF THE NEW BRUNSWICK
HUMAN RIGHTS ACT, R.S.N.B. 1973,
c. H-11; AND

IN THE MATTER OF A BOARD OF INQUIRY
APPOINTED TO INVESTIGATE THE COMPLAINT
OF DAVID ATTIS

AFFECTING:

DAVID ATTIS,
Complainant
- and -

BOARD OF SCHOOL TRUSTEES,
DISTRICT 15,
Respondent
- and -

HUMAN RIGHTS COMMISSION
Party

- and -

MALCOLM ROSS
Party
- and -

DEPARTMENT OF EDUCATION,
Party
- and -

NEW BRUNSWICK TEACHERS'
FEDERATION,
Party
- and -

CANADIAN JEWISH CONGRESS
Party

DECISION

BOARD OF INQUIRY: Brian D. Bruce

HEARING DATES: December 8 to 16, 1990
April 22, 1991 to May 9, 1991
Moncton, N.B.

DATE OF DECISION: August 28, 1991

APPEARANCES:

For David Attis
- Joseph E. Weir

For Board of School Trustees, District 15
- James Letcher and Catherine Storey

For Human Rights Commission
- Joanne E. McLeod, Q.C.

For Malcolm Ross
- Douglas Christie

For Department of Education
- Clyde Spinney

For New Brunswick Teachers' Federation
- George P. Filliter

For Canadian Jewish Congress
- Joel Richler

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I. BACKGROUND

This Board of Inquiry was established on September 1, 1988 pursuant to Section 20 of the *Human Rights Act*, R.S.N.B. 1973, c. H-11 (the *Act*) by the Honourable Mike McKee, Minister of Labour for the Province of New Brunswick, to investigate the matter of a complaint of David Attis (the Complainant) against Board of School Trustees, District 15 (School Board). Hearings into this matter were not able to commence until December 1990 due to several court challenges to the jurisdiction of the Board of Inquiry. Although these challenges in the courts did significantly delay the commencement of the hearings of the Board of Inquiry, the decisions by the courts have assisted in answering many preliminary questions that would otherwise have been placed before this Board of Inquiry. The findings by the courts in relation to these preliminary questions will be referred to at relevant points in this decision.

The Board of Inquiry commenced hearings with the parties in December 1990 for eight days followed by fourteen days of hearings in April/May 1991. There were eleven witnesses called to give evidence. The proceedings have been transcribed and fill 23 volumes totalling 3981 pages.

The Complainant alleges that the School Board violated Section 5 of the *Act* by discriminating against him and his children in the provision of accommodation, services or facilities on the basis of religion and ancestry. Subsection 5(1) of the *Act*, the relevant subsection, states as follows:

> "5(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall
>
> (a) deny to any person or class of persons any accommodation, services or facilities available to the public, or
>
> (b) discriminate against any person or class of persons with respect to any accommodation, services or facilities available to the public,

> because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status or sex."

The complaint dated April 21, 1988 alleges that the offence complained of occurred between March 29, 1977 through to April 21, 1988, the date the complaint was filed. The complaint reads as follows:

> "I am a Jew and three of my children are enrolled as students within District # 15.
>
> I have reason to believe that Malcolm Ross, a teacher employed by the School Board, made racist, discriminatory and bigoted statements to his students during the 1976-77 school year. I have reason to believe that the School Board knew of this, yet it merely transferred Malcolm Ross to another school.
>
> Malcolm Ross has written at least two books (i.e. Web of Deceit and Spectre of Power) and has made widely published statements (eg. Miramichi Leader, October 22, 1986, page 5) that are anti-Jewish, racist, bigoted and discriminatory and that deny that six million Jews died during the Nazi Holocaust.
>
> On April 22, 1987, the School Board failed to pass a motion condemning bigotry and racism. On March 15 or 16, 1988, Ray Maybee, a member of the School Board, publicly stated that Malcolm Ross' opinions were well documented and he had done his homework, thus appearing to support Mr. Ross' discriminatory views. Furthermore, when the School Board reprimanded Malcolm Ross on March 15, 1988, it referred to his views merely as controversial rather than discriminatory and the reprimand applied only to his future actions, not his past actions.
>
> By its own statements and its inaction over Malcolm Ross' statements in class and in public, the School Board has condoned his views, has thus provided a racist and anti-Jewish role model for its students, has fostered a climate where students feel more at ease expressing anti-Jewish views, and has reduced the credibility of the content of its official history curriculum, thus depriving Jewish and other minority students of equal opportunity within the educational system that the School Board provides as a service to the public.
>
> I believe that the School Board has thus furthered the aims of the Ross' of our society. I would like to give a couple of examples:
>
> i) Several students at the Magnetic Hill School intend to present a petition to the Premier of New Brunswick in support of Malcolm Ross. When asked if they concurred with Ross' views, the students replied that they didn't know.
>
> ii) My eldest daughter, a grade 6 student at Beaverbrook School was invited by a friend to attend a gymnastic exhibition at Magnetic Hill School. She was reminded by a classmate that she shouldn't go

> there because that is 'where the teacher who hates Jews' works. She attended nevertheless.
>
> I have reasonable cause to believe that the Board of School Trustees of District # 15 has violated Section 5 of the Human Rights Act."

Evidence as to events that occurred subsequent to April 21, 1988 was determined to be relevant and, therefore, admissible because the complaint was a continuing one and, further, because evidence as to what has occurred since the filing of the complaint may be necessary to determine what would be appropriate remedial action should the complaint be upheld.

The Complainant, a lay person, drafted the complaint filed with the Human Rights Commission. Although the complaint may not be concise and clear in all respects, it does identify the basic nature of the complaint. The Saskatchewan Court of Queen's Bench in the case of Herman and Rodin (1989), 10 C.H.R.R. D/5798 (McLellan J.) determined that proceedings before a board of inquiry under human rights legislation are civil rather than penal in nature. A complaint under human rights legislation, therefore, should not be subject to the same strict requirements as an information or indictment under the *Criminal Code*. The purpose and objective of human rights legislation, which will be discussed at a later point, favours procedural flexibility versus procedural technicality provided there is no denial of natural justice. The New Brunswick Court of Appeal in its decision of September 8, 1989 reported at (1990), 100 N.B.R. (2d) 181, determined, at page 208, that the complaint of David Attis met the statutory requirements of Section 17 of the *Act* and that if further information was required during the proceedings before the Board of Inquiry that a demand for particulars could be made. There was some correspondence between the School Board and the Complainant prior to the commencement of the hearings regarding a demand for particulars but the matter was not pursued by the School Board or any of the other parties at the hearings before this Board of Inquiry.

The thrust of the complaint is that the School Board, by failing to take appropriate action against Malcolm Ross, a teacher working for the School Board who allegedly made racist, discriminatory and bigoted statements both to his students and in published statements and writings, has condoned an anti-Jewish role model and thus breached Section 5 of the *Act* by discriminating against Jewish and other minority students within the educational system served by the School Board.

II. PROCEDURAL MATTERS

The manner in which a Board of Inquiry may be established and its powers and method of proceeding are provided for in Section 20 of the *Act*. The Board is given very broad powers to determine its own method of procedure and is not bound by the Rules of Court. Several matters of a procedural nature arose during the conduct of the hearing requiring the Board to make rulings and give direction as to the process to be followed. Some of these rulings and directions will be summarized briefly in this section.

Designation of Parties

One of the most important decisions of a procedural nature made by this Board of Inquiry was the designation of parties prior to the commencement of hearings. Subsection 20(4.1) of the *Act* gives automatic party status to the Human Rights Commission (the Commission), the complainant and any person named in the complaint who is alleged to have violated the *Act*. In addition Paragraph (d) of Subsection 20(4.1) provides the Board of Inquiry with the power to designate any other person it may determine to be a party. Three additional parties were designated by the Board of Inquiry prior to the commencement of the hearings. These additional parties were Malcolm Ross, the New Brunswick Teachers' Federation (the Teachers' Federation) and the Department of Education. These parties were designated because on an initial review of the complaint it was determined that all three had direct interests and rights which might be affected by an order of the Board of Inquiry if it was determined that a violation of the *Act* had occurred. In Re Damien and Ontario Human Rights Commission (1976), 12 O.R. (2d) 262 (Ont. High Ct. of Justice) at page 263, Mr. Justice Osler concluded:

> "A party whose rights will be directly affected by the acts of a Court or administrative body should normally be a party to the proceedings contemplated."

Malcolm Ross' interests, as the teacher who allegedly made the statements and published writings to which objection was taken in the complaint and whom the School Board allegedly failed to discipline properly, are obvious. To find the School Board in breach of Subsection 5(1) for condoning the views of Malcolm Ross would possibly require imposing a remedy directly affecting Malcolm Ross. The complaint can also be read as claiming that the actions of Malcolm Ross are directly in breach of Subsection 5(1) because he is a teacher employed by the School Board. Counsel for Malcolm Ross at the commencement of the hearing stated that should the complaint be upheld his client could suffer severe consequences including possible loss of his teaching position.

The Teachers' Federation, as the bargaining representative of teachers in New Brunswick and as a party to the collective agreement governing the terms and conditions of employment between teachers and the School Board, has an interest in the proper application of the Collective Agreement and its relationship to the *Act*. Finally, the Department of Education was added as a party upon the request of the School Board which claimed that the Department of Education played a vital role and had a vital interest in this matter. These three parties were given an opportunity at the commencement of the hearings of the Board of Inquiry to object to their designation as a party and none did so.

The Canadian Jewish Congress made application to the Board of Inquiry, prior to the commencement of the hearings, to be added as a party. The Board of Inquiry reserved decision on whether it would exercise its discretion to designate the Canadian Jewish Congress as a party and advised all parties who had been designated that this request from the Canadian Jewish Congress would be considered at the commencement of the hearings. The School Board and Malcolm Ross opposed this request from the Canadian Jewish Congress to be designated as a party. Written and oral submissions were received.

The general test that has been followed in deciding the issue of status in proceedings was outlined by Esson J.A. in MacMillan Bloedel Limited v. Mullin et al.; Martin v. R. in Right of British Columbia and MacMillan Bloedel Limited, [1985] 3 W.W.R. 380 (B.C.C.A.) at page 383 where he stated:

> "I do not mean to say that every application by a private or public interest group which can bring a different perspective to the issue should be allowed. I say only that, in some cases, that is a factor which will overcome the absence of a direct interest in the outcome. In each case, it will be necessary to consider the nature of the issue and the degree of likelihood that interveners will be able to make a useful contribution to the resolution of the issue without injustice to the immediate parties."

It is obvious from the comments by Mr. Justice Esson that the test for intervener status goes beyond the "direct interest" test to a more appropriate test of "useful contribution to the resolution of the issue without injustice to the immediate parties."

There was no challenge to the claim by the Canadian Jewish Congress that it does represent Canadian Jewry nor to its claim to a particular expertise and interest in the area of anti-Semitism and its manifestations which is the subject of the present complaint. This expertise and interest does allow the Canadian Jewish Congress to bring a different perspective to the Inquiry from that of any of the other parties. Another factor considered in deciding to add or exclude the Canadian Jewish Congress as a party to these proceedings was that the Canadian Jewish Congress was added as a party both at the Court of Queen's Bench and Court of Appeal levels in the New Brunswick cases which considered challenges to the right of this Board of Inquiry to proceed.

A further factor which must be considered in deciding to grant or deny party status is the nature of human rights legislation itself. The *Act* is remedial in nature and has as its objective the elimination of discrimination. It is important, given this objective, that all relevant views be presented and thus it is arguable that the *Act* allows for the process to be more open to interest groups with something to add to an inquiry. However, in deciding whether to add parties it is important to remember that the nature of the process is still an adversarial one and that all parties must be on a level playing field. To add parties would possibly affect the fairness of the process to a complainant and/or respondent. A respondent must be permitted to know the case it has to meet as presented by a complainant. To allow a third party to enter the picture at this initial level might be unfair in certain circumstances. As stated by Seaton J.A. in Can. (A.G.) v. Aluminum Co. of Canada (1987), 10 B.C.L.R. (2d) 371 at page 385:

> "Interveners should not be permitted to take the litigation away from those directly affected by it. Parties to litigation should be allowed to define the issues and seek resolution of matters they determine appropriate to place in issue. They should not be compelled to deal with issues raised by others."

This Board of Inquiry is of the opinion that there is no fundamental difference in the position which would be advanced by the Canadian Jewish Congress and the Complainant. However, there is sufficient indication that there may be a difference in perspective regarding the issues in dispute. It is noted that the Canadian Jewish Congress has given sufficient advance notice to the other parties of its intention to seek party status.

After a full consideration of the above factors, the Board of Inquiry determined that the Canadian Jewish Congress should be permitted to become a party to the proceedings for purposes of legal argument only. The Canadian Jewish Congress was not permitted to call or cross-examine witnesses.

There is confusion amongst some members of the public on the role of a board of inquiry appointed under Section 20 of the *Act* and the right of members of the public to make submissions to a board of inquiry on the general topic area of the complaint. The role of the board of inquiry by Subsection 20(1) is specifically limited to the investigation of the matter complained of following the failure of the Commission to settle the matter. The name "board of inquiry" suggests a proceeding more in the nature of a royal commission or public inquiry into matters which are not governed by statute. The matter complained of relates to a specific allegation of a breach of the *Act* by a named person. Subsection 20(6.1) states that at the conclusion of the inquiry, if the board does not find, on a balance of probabilities, that the *Act* has been violated, the board shall dismiss the complaint. If a conclusion is made that the *Act* has been violated then the board is provided with a range of powers to effect compliance and rectify any harm. It is an adversarial process in which parties are specifically identified by the *Act* (the complainant, respondent and Commission) with power in the Board, as noted earlier, to add parties. The onus is on the complainant to prove that a violation of the *Act* has occurred. In such circumstances, it is essential that the rules of natural justice be respected in the proceedings of the board of inquiry. Although a board of inquiry is given the power to establish its own procedure, to stray far from the traditional rules applicable to court proceedings is to risk denying a party a fair hearing. This Board of Inquiry, therefore, has limited itself to the specifics of the complaint before it and has only considered evidence presented during the hearings at which all parties had the opportunity to be present.

Non-Suit Motion

Upon close of the Complainant's case, counsel for Malcolm Ross moved a motion of non-suit based on there being no evidence, presented by the Complainant, upon which the Board could rule or exercise its jurisdiction under the *Act*. The motion was joined in by counsel for the School Board, counsel for the Department of Education and counsel for the Teachers' Federation. Counsel for the Complainant opposed the appropriateness of such a motion.

In raising the motion, concern was expressed by counsel for Malcolm Ross and counsel for the Teachers' Federation as to whether the parties moving the motion would be permitted to elect to call evidence, if the motion was defeated. The Board of Inquiry agreed it would not foreclose the option of an election in its consideration of the motion. This Board's consideration of the motion, therefore, involved two possible steps. Firstly, it had to consider the appropriateness of such a motion being before it and, secondly, if it was determined appropriate, the Board had to make a determination on the merits of the motion. If the motion was found to be inappropriate, a decision on the merits would not be made in order to preserve the option, as requested by counsel for the Teachers' Federation, to elect to call evidence. It was not disputed by counsel for the Complainant that a party should have the option of moving a motion of non-suit if such motion is coupled with an election not to call evidence.

In considering the motion of non-suit the Board of Inquiry has reviewed decisions from other boards of inquiry, case law precedents, academic writings and submissions of counsel for the respective parties. This Board has concluded that non-suit motions, without election not to call evidence, while appropriate in certain circumstances before boards of inquiry, will be infrequent and rare and that the generally acceptable approach will be for the parties moving such motions to be required to elect to call evidence.

In Ontario Human Rights Commission and Mr. Cezar Abary v. North York Branson Hospital and Edwin Hull (1988), 9 C.H.R.R.

D/4975 (Ratushny), a decision of a board of inquiry established under the *Human Rights Code* of Ontario, Mr. Ratushny states at paragraph 38201:

> ". . . an application in the nature of 'no case to meet' should be permitted before administrative tribunals without requiring the respondent first to elect whether or not to call evidence."

However, Mr. Ratushny goes on to state at paragraph 38203: ". . . a ruling of 'no case to meet' is likely to be infrequent before boards of inquiry." Mr. Ratushny, at paragraph 38202, in Abary emphasizes the point that the threshold is ". . . very low, i.e. 'any' evidence capable of supporting the adverse finding." Further he points out that it is important that no decision as to the credibility of the evidence is being made at this point in time. He states, again at paragraph 38202, that the credibility of the evidence will only be weighed where the ". . . testimony . . . is so far-fetched as not to be capable of belief by any reasonable person."

This Board of Inquiry has reviewed several decisions from courts in Nova Scotia, Prince Edward Island, and Newfoundland concerning the procedure to be followed in civil proceedings. The courts in many of these cases permitted argument to proceed on a motion for non-suit without requiring the parties to elect not to call evidence. However, also without exception, all of these jurisdictions had rules of civil procedure which allowed the parties to have their motion considered without putting them to an election. No such rule has been discovered in New Brunswick. See: Campbell v. Campbell (No. 1) (1990), 83 Nfld. & P.E.I.R. 332; Robichaud v. Bruce (1988), 83 N.S.R. (2d) 280; Manuel Estate v. Parsons Estate, [1991] N.J. No. 37 (unreported); Ward v. Harris Projects Ltd. (1989), 73 Nfld. & P.E.I.R. 11. Further, in reaching its conclusion this Board referred to M.R. Gorsky's summary in his text Evidence and Procedure in Canadian Labour Arbitration, (1981, DeBoo) at page 237 in which he states that it is customary for parties in labour arbitrations to be put to an election before consideration of a non-suit motion by the arbitrator. It is noted that labour arbitration boards, like this Board of Inquiry, are not subject to the civil rules of procedure and that many similarities exist between boards of arbitration and boards of inquiry in the goals and objectives sought to be met by these processes.

The issue of the proper procedure to be followed when dealing with non-suit motions is also extensively discussed in a 1985 decision by H.A. Hubbard, Samuel Nimako v. CN Hotels, reported at (1985), 6 C.H.R.R. D/2894. This case dealt with a motion of non-suit by a respondent and it was subsequently decided that the respondent should either withdraw the motion or elect to call no evidence. In reaching this conclusion, Professor Hubbard cited Oxford v. Department of Health and Social Security, [1977] I.C.R. 884 as authority for the proposition that the respondent should be put to an election. At paragraph 23568, Hubbard quotes Phillips J. at 886-7:

> "It further seems to us that, while the burden of proof lies upon the applicant, it would only be in exceptional or frivolous cases that it would be right for the industrial tribunal to find at the end of the applicant's case that there was no case to answer and that it was not necessary to hear what the respondent had to say about it." [Emphasis added.]

Further, Professor Hubbard states at 23569:

> "No one participating in a hearing can fail to form impressions as the evidence is being adduced; but until arguments are heard and duly considered it would seem improper to make a *finding* that the Commission's case is 'weak' and that *therefore* the Respondent may pursue a non-suit motion without having to elect to call no evidence."

Finally, concerning the issue of the procedure to be followed concerning non-suit motions, Professor Hubbard, at 23569 states:

> "The view I have come to is that, unless there is something exceptional in the circumstances before it, a Board of Inquiry under the *Human Rights Code* ought not to entertain a non-suit motion without putting the respondent to an election . . . ." [Emphasis added.]

Professor Hubbard characterized proceedings, at paragraph 23566-23567, before a board of inquiry as analogous to civil proceedings and saw a distinction in the manner in which non suit motions should be addressed in a civil proceeding and in a criminal proceeding. He referred, at paragraph 23559, to Re Cedarvale Tree Services Ltd. and Labourers' International Union of North America, Local 183 (1972), 22 D.L.R. (3d) 40 at page 49, as authority for the proposition that an inquiry may ". . . adopt such procedure as appears to it to be just and convenient in the particular circumstances of the case before it." [Emphasis added.]

This Board accepts the reasoning of Professor Hubbard regarding the nature of inquiries being civil in nature, albeit with more flexibility than might be found in the normal civil proceeding. As well, his reasoning is persuasive regarding the need for boards of inquiry to consider what is "just and convenient" in determining how the process should be implemented. With regard to the present case, it was determined that it was not appropriate for the motion for dismissal without election to be considered given the circumstances of this case and the public nature of this inquiry. As noted earlier, the Board was asked not to pre-empt the right of certain parties to elect not to call evidence and thus restricted its ruling to the appropriateness of the motion in terms of process. As it was found to be an inappropriate motion, it was not a motion that could properly come before it to be considered on its merits and the Board ruled the motion be withdrawn. No party to the original motion exercised its option to put forth a new motion of non-suit in which it was prepared to elect not to call evidence.

III. EVIDENCE

Before proceeding to discuss the evidence it is appropriate to make a few brief comments concerning the manner in which the evidence is to be presented. Only that evidence most relevant to the issue being decided by this Board has been summarized. For ease of analysis the evidence has been divided into the following four categories: employment record of Malcolm Ross; writings and statements by Malcolm Ross; School Board's actions; and, alleged effects.

Employment Record of Malcolm Ross

Malcolm Ross, as evidenced by the employment record supplied by the School Board and background information supplied in the Review Committee report of February 25, 1987, was employed as a teacher at Birchmount School from September 1, 1971 to June 1976 and at Magnetic Hill School from September 30, 1976 to the present. Both of these schools are in School District 15. Malcolm Ross is currently a Modified Resource teacher at Magnetic Hill School and teaches approximately thirteen students per day for varying periods of time. Malcolm Ross does not have a homeroom class.

Writings and Statements by Malcolm Ross

The evidence presented to the Inquiry shows that Malcolm Ross has written and authorized publication of a number of books which have been the subject of complaint and/or controversy. These include (listed by Copyright date):

1. Web of Deceit - Copyright 1978;
2. The Real Holocaust (The Attack on Unborn Children and Life Itself) - Copyright 1983;

3. Spectre of Power - Copyright 1987;

4. Christianity vs. Judeo-Christianity (The Battle for Truth) - Copyright 1987, 4th. printing 1989.

In addition to his published works, Malcolm Ross has written a number of letters to the editors of various papers in New Brunswick, including (listed in chronological order):

1. Letter to the Editor - The Moncton Times - February 22, 1978;

2. Letter to the Editor - The Daily Gleaner - June 6, 1983;

3. Letter to the Editor - The Miramichi Leader - October 22, 1986.

There was no evidence presented which contradicted the authorship of either the letters or the books as being that of Malcolm Ross. Further, the Inquiry was presented with evidence that Malcolm Ross appeared on a local television program on November 21, 1989 in which he discussed his views and the books which he had written.

School Board's Actions

Evidence, although hearsay, was presented that Malcolm Ross had uttered racist comments about "blacks in Rhodesia" while he was teaching at Birchmount School during the early to mid-1970's. Some of these comments were allegedly made in the classroom. Reference to these remarks can be found in the testimony of David Attis; in a letter to Ross MacCallum from Charles Devona, dated February 3, 1987; in submissions to the Review Committee which was established in 1987; and, in Spectre of Power (at page 112).

The evidence indicates that the publications of Malcolm Ross were causing public comment as early as 1978 and that the School Board was aware of the controversy during that year. A review of the evidence shows that Julius Israeli contacted the School Board, through letters to the Director of School District 15 and the principal of Magnetic Hill School, regarding his concerns about Malcolm Ross and his continued employment. In fact, Julius Israeli requested that the School Board dismiss Malcolm Ross. These letters were dated April 26, 1978, May 9, 1978 and another on May 17, 1978.

In addition to the above letters, the School Board had been contacted by Noel Kinsella, Chairman of the Human Rights Commission, in a letter of June 12, 1978. In the letter Noel Kinsella expressed concern over the writings of Malcolm Ross and requested that the classroom performance of Malcolm Ross be supervised. As well, in a May 17, 1978 article in The North Shore Leader, it was noted that Malcolm Ross had been the subject of an ATV commentary by Gary McCauley. While the commentary apparently did not mention Malcolm Ross or his book, Web of Deceit, by name, the article makes it clear that Malcolm Ross was the subject of the commentary. The article cites Reverend Gary McCauley as calling for the dismissal of Malcolm Ross and rejecting the right of Malcolm Ross to publish his writings under the protection of a right to free speech. Also in 1978, at least two articles appeared in the Moncton area newspaper, The Moncton Transcript, dealing with the issue. It is noted that in an article of June 2, 1978, Noel Kinsella referred to the importance of protecting free speech versus suppressing the work of Malcolm Ross on the basis that it might cause discrimination. The article was written in relation to the publication of the book, Web of Deceit, and included comments from a member of the Jewish community and the School Board. Rabbi Stanley Greenberg expressed the view that the book had caused members of the Jewish community to become upset because of its being anti-Jewish and an improper portrayal of Zionism. Further, the article stated that Julius Israeli had been attempting to have Malcolm Ross dismissed and to have the Justice Department review this work in light of hate literature laws. Also, the article noted that Nancy Humphrey, Chairperson of the School Board at that time, stated the School Board's position as being that Malcolm Ross could do what he wanted on his own time. Also in 1978, Malcolm Ross and Julius Israeli wrote letters to the editor of The Moncton Times in which they each accused the other of distorting "the facts."

From 1979 up to and including 1984 there is little evidence of a public controversy concerning Malcolm Ross and his views. The evidence shows that Malcolm Ross' in-class teaching was being monitored at least for part of this time. In 1983, a letter by Malcolm Ross to the editor of The Daily Gleaner prompted the Human Rights Commission to contact the Superintendent of School District 15 to ensure that Malcolm Ross' activities were still being monitored. By 1986, the Malcolm Ross issue was again being addressed by various articles, letters, and other media coverage. The media coverage at this time, according to Carl Ross, Chairman of the School Board, caused the School Board to begin to spend a lot of time on the issue. The testimony of Carl Ross further revealed that by 1986-1987 the School Board was receiving approximately ten to twenty letters per week on the issue. Further, the evidence shows meetings between representatives of the School Board and Malcolm Ross during this time.

On October 22, 1986 Malcolm Ross wrote a letter to the editor of The Miramichi Leader outlining his views. This letter is very relevant because it provides a clear summary of Malcolm Ross' opinions and dispels any uncertainties as to the interpretation to be placed on his earlier writings. Following this letter, School Board representatives met with Malcolm Ross on November 18, 1986. A follow-up letter from the School Board, dated November 26, 1986, shows that the meeting was held to discuss concerns over articles which had appeared in the media and contacts made with the School

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Board by the Departments of Justice and Education. The letter reveals that it was agreed that a monitoring scheme would be established in which Malcolm Ross' classroom would be visited "at least three times a week" and the materials being used in class by Malcolm Ross would be reviewed.

Also in 1986, a copy of a letter addressed to Julius Israeli from David Clark, the Attorney-General of New Brunswick at the time, was published. In the letter, Mr. Clark refused to pursue legal action against Malcolm Ross under the hate literature laws of the *Criminal Code of Canada*. Further, an article by Don Hoyt of The Telegraph-Journal on December 17, 1986, highlighted the public interest in Malcolm Ross' works by reporting the views of a number of individuals who had spoken out against Malcolm Ross and his views.

By 1987, the controversy over Malcolm Ross' writings was increasing both in the level of the School Board's involvement and in the public response to the entire issue. A number of news clippings appeared in various newspapers across the province. These news clippings largely dealt with the controversy over the possible prosecution of Malcolm Ross under the hate literature laws. They did, however, reflect a concern about the possible discriminatory effect of Malcolm Ross' views. Expressions of concern were also being received by the School Board from a number of people during 1987. Generally, the tone of the letters was one which called upon the School Board to act concerning Malcolm Ross. Further, the Department of Education was also actively involved in the Malcolm Ross issue during 1987.

Presumably in response to expressions of concern, the School Board decided to investigate the issue and its possible impact upon the school system. In a motion of January 28, 1987 the School Board established a Review Committee to ". . . review the possible impact of this issue upon the learning environment in school programs." Further, the School Board went on record at the same time to express its concern that the issue had the potential to cause harm to ". . . the positive human relations that are essential to the well being of a community . . . ." The Review Committee interpreted its mandate as being a determination of how Malcolm Ross' personal views might, if at all, be affecting the delivery of the school curriculum and in what ways, if any, the positive human relations of the school community were being affected by the publicity surrounding the Malcolm Ross issue. In addition, however, the Review Committee defined "community" as including only the Magnetic Hill School community rather than all of School District 15. The School Board accepted the Committee's report on February 25, 1987. The Committee's findings, at page 8, were:

> "1. That there appears to be no evidence to suggest that Malcolm Ross is teaching his beliefs or discussing his religious theories with staff or students.
>
> 2. That there is not (*sic*) evidence to suggest that the publicity surrounding Malcolm Ross has had a negative effect on the human relations within the present school or between the school and the community."

The Committee's report does not make mention of a letter addressed to the Superintendent of School District 15 dated February 3, 1987 from Charles Devona alleging that Malcolm Ross had expressed racist comments in class while at Birchmount School. Nor does the report in its conclusions address the issues raised in the substantial and well written submission to the Committee from the Atlantic Jewish Council concerning Malcolm Ross' views and their possible discriminatory effect. Finally, although the report lists allegations by two former teachers who had worked with Malcolm Ross that he had made comments of a racist nature while at Birchmount School, they are not referred to in its findings.

With regard to the Review Committee, its process, and its findings, counsel for the Complainant called Ernest Hodgson as an expert witness in the field of education. This Board of Inquiry accepts Ernest Hodgson as an expert witness in the field of education but notes that his relevant experience was not recent experience and that this fact has influenced the weight that this Board of Inquiry is prepared to give to it. Further, some of his evidence falls within the realm of common understanding and has little value as expert evidence. He testified that the Review Committee was flawed in its composition, processes used, and that the Committee failed to discharge the mandate given to it by the School Board. Ernest Hodgson claimed that the composition of the Committee was flawed in that the Committee should have had a majority of independent members. Ernest Hodgson testified that the Committee had flawed the process by rejecting expert advice as to the conducting of interviews, by conducting fifty-nine interviews in four days, by reading out two rather detailed questions and asking for a response, and by improperly selecting the interview sample. Ernest Hodgson stated:

> "If you get the original questions wrong and you get the processes wrong and then you get the answers wrong, and then the answers misinterpreted, then the whole thing is wrong."

Finally, he believed that the Committee had misinterpreted its mandate by only addressing the impact of Malcolm Ross' activities on the learning programs at Magnetic Hill School rather than the entire school district. In this regard, he also saw the Committee as improperly focusing on the publicity surrounding Malcolm Ross rather than upon any actual negative effect within the school and community. In essence then, Ernest Hodgson testified that the results of the report were unreliable in that the Committee failed to fully investigate and examine the implications of the alleged private actions of Malcolm Ross.

September 17, 1987 saw the first direct meeting between Malcolm Ross and the Chairman of the School Board. Carl Ross testified that he believed the meeting came about so that both parties could come to a clearer understanding of their respective positions. At this meeting, the publications of Malcolm Ross were discussed. In a letter dated April 26, 1988, Cheryl Reid, acting Superintendent at the time, states that Malcolm Ross was ". . . cautioned strongly against any further publications regarding [his] views. . ." at the meeting between Carl Ross, Cheryl Reid, Betty Lutes and Malcolm Ross. In response to disciplinary action related to the publication of his book, Spectre of Power, in late 1987 or early 1988, Malcolm Ross claimed that the School Board at the September 17, 1987 meeting had given "tacit approval" for the publication of this book.

Also in 1987, two motions proposed by Audrey Lampert concerning the Ross issue failed due to a lack of a seconder. These motions dealt with the release of the Review Committee report and with the School Board making a public statement rejecting all forms of racism and hatemongering.

The first significant event of 1988 was the imposition of disciplinary action against Malcolm Ross. The evidence shows that the School Board decided in March 1988 that Malcolm Ross had inhibited its ability to manage and direct the educational process and had detrimentally affected its reputation. It also noted a negative impact on Malcolm Ross' reputation and his perceived inability to foster an atmosphere of tolerance as a public school teacher. Therefore, by letter of March 16, 1988 in which the School Board referred to his writings as controversial, Malcolm Ross was informed that any further publications, or public discussion of his views or his works, would lead to greater disciplinary action, including the possibility of dismissal. The School Board also stated to Malcolm Ross that compliance with its directives would result in the matter being considered closed. Malcolm Ross grieved this decision without success. He disputed that the School Board's abilities were negatively affected or that the School Board's reputation had been adversely affected. It was shortly before the imposition of this disciplinary action that an opinion letter from Clyde Spinney, counsel to the School Board at that time, indicated that the School Board could discipline for out-of-school conduct. The reprimand and restriction, sometimes referred to as the "gag order", of March 16, 1988, was kept in Malcolm Ross' personal file until September 20, 1989 when it was ordered removed.

The next relevant action of 1988 was the filing of three complaints concerning the Malcolm Ross issue. On March 18, 1988, Kathleen Makela filed a complaint against the Board of School Trustees, District 15, alleging discrimination, as per Section 5 of the *Human Rights Act*, on the basis of ancestry and religion. Kathleen Makela also filed a complaint on April 20, 1988 in which she alleged a breach of Section 6 of the *Human Rights Act*. On April 21, 1988 David Attis filed the complaint which is the subject of the present Inquiry. Kathleen Makela's complaints were withdrawn and dismissed later in 1988.

Subsequent to the above complaints being filed, the Human Rights Commission began its investigation. As part of this investigation the Human Rights Commission requested the School Board to release records concerning Malcolm Ross, his students, and a copy of the Review Committee Report. In addition, the Commission made two settlement offers which do not appear to have been pursued by the School Board. The School Board refused to release the requested documentation to the Commission on the basis that it wished to protect the confidentiality of teachers' records, that it was concerned over the possible identification of special needs students, and that it was concerned because of the confidential nature of the Review Committee report. This refusal was outlined in a letter of August 25, 1988 from Carl Ross to Francis Young of the Human Rights Commission. Upon the failure of the parties to resolve the complaint, the Commission recommended that this Board of Inquiry be established and on September 1, 1988, the Minister of

Labour, the Honourable Mike McKee, complied with this recommendation.

During 1988 the School Board continued to monitor the in-class activities of Malcolm Ross. Further, the School Board was made aware of views both in favour of and opposed to Malcolm Ross. These ranged from expressions of dissatisfaction with Malcolm Ross by individuals such as Premier Frank McKenna and Education Minister Shirley Dysart, to a filing of a complaint with the Human Rights Commission by Charles Simon Puxley, concerning what he considered to be the unjust treatment of Malcolm Ross. By this point in time the Attorney-General, James Lockyer, had announced that no charges would be laid against Malcolm Ross under the hate-literature laws. Also, 1988 saw the development by the Department of Education of a Holocaust curriculum and a report on "Initiatives in Multicultural Education" describing various programs dealing with multiculturalism.

On March 22, 1989, the School Board adopted Policy 5006 which established guidelines for teachers regarding individual rights and freedoms. This policy was intended to ensure that students were provided with a positive and safe learning environment which taught respect for individuals' rights and freedoms. This policy also provided for disciplinary action in the event that any employee's actions constituted a hindrance to the provision of school services. In August of 1989, the Minister of Education released a Ministerial Statement on Multicultural/Human Rights Education which was intended to set the direction for policy development by school boards to ensure that multicultural and human rights education formed ". . . an integral part of [the] school system."

On September 20, 1989, the School Board decided to remove the reprimand and restriction from Malcolm Ross' file and asked Malcolm Ross to comply with the provisions of Policy 5006. This decision and request were communicated to Malcolm Ross in a letter of September 22, 1989. Further, the School Board again informed Malcolm Ross that some of his past actions and comments had affected the administrative operation of Magnetic Hill School and had caused some parents to be concerned about general safety and the attention being brought to the school. On November 21, 1989, approximately two months after the removal of the restriction and reprimand from Malcolm Ross' file, Malcolm Ross appeared on a local television program. This appearance and the comments made while on the television program led to the School Board deciding, on November 30, 1989, to issue a severe reprimand to Malcolm Ross. This decision was communicated to Malcolm Ross in a letter of December 1, 1989. In this letter, Ross MacCallum, on behalf of the School Board, characterized Malcolm Ross' actions and the School Board's request in the following manner:

> "The School Board is sincerely requesting that you refrain from *publicly assailing* another religious belief, the Jewish religion, when proclaiming your own faith." [Emphasis added.]

and

> "In the view of the School Board, your current approach to the method of expounding upon your religious beliefs by *publicly denouncing* another borders on freedom or licence to judge and condemn . . . ." [Emphasis added.]

In a related letter of December 1, 1989, the School Board requested the Department of Education to provide input as to whether Malcolm Ross' appearance constituted a breach of the Ministerial Statement of 1989. Earle Wood, Deputy Minister of Education, responded that the Ministerial Statement was not meant as a ground for disciplinary action against an individual teacher. Rather, it was meant to provide a guideline to school boards so that they might develop their own policies. Further, the letter stated that day-to-day responsibility for disciplinary action lay with the School Board.

Alleged Effects

The evidence reveals that there were many incidents in which Jewish students were singled out, either in school activities or by other students, and made to feel different. For the purposes of this section of the decision, the evidence of Yona Attis and Leigh Lampert will figure most prominently. The evidence of David Attis regarding incidents against Jewish students is for the most part hearsay and therefore cannot be given the same weight.

Before proceeding to review the evidence of Yona Attis and Leigh Lampert, some comments concerning the testimony of young witnesses in general, and the testimony of these two students in particular, is warranted. It is important to remember that testifying at any hearing is often difficult even for adults, especially during cross-examination. However, if a witness' evidence is to be given full weight it is important that the testimony be able to stand up to cross-examination. While it is true that the testimony of Yona Attis was punctuated with periods of strong emotionalism, it is also equally true that the evidence was presented in a credible and forthright manner, as was the evidence of Leigh Lampert. This Board accepts the evidence of Yona Attis and Leigh Lampert and given the length of time over which many of the incidents to which they referred occurred, the Board believes that the evidence was presented in a manner consistent with the passage of time.

One of the first incidents referred to by Yona Attis in her testimony occurred in the Spring of 1988 when she went to watch a gymnastic competition at Magnetic Hill School. Yona Attis testified that her friends, upon hearing that she was going to be attending the competition at Magnetic Hill School, told her that she could not go there because that was ". . . where the teacher who hates Jews works." Another friend stated that the teacher's name was Malcolm Ross. After this, Yona Attis testified that she went to the school but that the whole time she was there she was scared ". . . that someone was going to come up behind me and grab me and beat me up or something." Upon cross-examination, Yona Attis stated that she believed she would continue to have fear if she was to enter Magnetic Hill School because of the presence of Malcolm Ross at the school.

Yona Attis testified that as early as Grade 2 she could remember a supply teacher at Edith Cavell School asking the students in her class to raise their hands if they loved Jesus. She claimed that she felt different because only herself and one other did not put up their hands. Starting in Grade 5 a number of incidents began to occur. These ranged from name calling based on her religion, to the wearing of swastikas by some students, to the drawing of swastikas on her books and school bag. While in the earlier years, these events were caused by a small number of students in the school, in later years, such as when Yona Attis was transferred back to Edith Cavell School, as many as twenty students, at one time or another, participated. Another aspect of this taunting was the shouting and signalling of the "Heil, Hitler" salute in her presence. Further, Yona Attis testified that she was made to feel different when various entertainers would come to the school and promote their Christian beliefs. Two particular incidents which stood out in her mind involved in the one instance, a keyboard player and, in the other instance, basketball players who professed their belief in Christianity. She testified that she was upset and although she felt like walking out during these incidents she did not for fear of standing out. Yona Attis testified that as far as she was concerned the teachers and principal did not really attempt to do anything about her situation. Yona Attis testified that she had suffered greatly as a result of all the name calling, the drawing and wearing of swastikas, and the apparent unwillingness of school officials to do anything to resolve the situation.

The evidence of Leigh Lampert indicates that he experienced incidents similar to those of Yona Attis while attending school in School District 15. It is evident that the wearing of swastikas and the drawing of swastikas on blackboards, walls, and books was also happening. Leigh Lampert also testified that a supply teacher, together with another student, gave the "Heil, Hitler" salute while in class.

With regard to the testimony of the other students all that needs to be said is that it generally supported the testimony of Yona Attis.

Yona Attis testified that her image of Malcolm Ross was created both by the media and perhaps by her father. Leigh Lampert also testified that his image of Malcolm Ross was largely determined by what he had heard from various media and from discussions at home. He further testified that he had read portions of Spectre of Power and had determined, for himself, that the book was anti-Semitic.

The testimony of David Attis indicated that he was a parent who was very concerned about the type of education his children would receive and how the presence of Malcolm Ross might affect this education. David Attis testified that he was concerned about the emotional drain on his daughter because of the various incidents which had occurred at school. He expressed his apprehension that his other daughters would also face discrimination within the school system because they were Jewish. Finally, David Attis testified that Yona Attis had informed him that the teachers did nothing to prevent the various attacks on her while she was at school.

There can be no doubt that David Attis sincerely believes that the writings and publications of Malcolm Ross are anti-Jewish, racist, bigoted and discriminatory. David Attis acknowledged that he had very little direct contact with the School Board on this issue prior to the complaint being filed on April 21, 1988. He maintained that this was so because he had become disillusioned with the process by which the School Board had handled complaints of discrimination in the past. Further, he believes that the School Board condoned Malcolm Ross' views by failing to act and to condemn those views. He is of the opinion that the School Board has, in effect, created a discriminatory environment within which Jewish students can not be treated equally.

Ernest Hodgson, in discussing the potential for impact upon the school system of Malcolm Ross' views, testified that this type of issue could not help but manifest itself in the relations within the school and between the school and the community at large. Of particular concern to Ernest Hodgson was the impact upon children of a teacher's outside activities. In the present case, Ernest Hodgson believed that Malcolm Ross' views and his public dissemination thereof, was certain to have an impact upon Jewish children. He held that teachers can have a great impact upon the students they teach. In this regard, he referred to a number of Codes of Ethics and/or Teaching Codes from across the country which dealt with the conduct expected of teachers. His opinion was that these codes reveal the need for teachers not to undermine the confidence or security of their students.

With regard to the position of Jewish students within the school system, it was his opinion that the situation was one in which the students, having a general knowledge of Malcolm Ross, could be fearful and otherwise afraid of Malcolm Ross. Further, he stated it was possible that Jewish students would be negatively influenced and would consider themselves the subject of suspicion or distrust and isolated from their friends. As well, it was possible that there would be a reluctance on the part of Jewish parents to participate within the school system and that Malcolm

Ross' views could also discourage other Jewish parents from moving to the Moncton area.

IV. DECISION

General principles of interpretation applicable to human rights legislation

The courts, in interpreting human rights legislation, have placed great emphasis on the unique nature and objectives of such legislation as reflected not only in the substantive provisions but also in the preamble which is a common feature of most human rights legislation. The courts in support of the general objectives of human rights legislation have given the various specific provisions within the legislation a broad rather than narrow application. Mr. Justice McIntyre in the Supreme Court of Canada decision Ontario Human Rights Commission and Theresa O'Malley v. Simpson-Sears Ltd., [1985] 2 S.C.R. 536, at pages 546-547, summarized this broad purposive approach to the interpretation of human rights legislation as follows:

> "It is not, in my view, a sound approach to say that according to established rules of construction no broader meaning can be given to the Code than the narrowest interpretation of the words employed. The accepted rules of construction are flexible enough to enable the Court to recognize in the construction of a human rights code the special nature and purpose of the enactment . . . and give to it an interpretation which will advance its broad purposes. Legislation of this type is of a special nature, not quite constitutional but certainly more than the ordinary -- and it is for the courts to seek out its purpose and give it effect. The Code aims at the removal of discrimination."

Chief Justice Stratton in the New Brunswick Court of Appeal decision, *supra*, at page 201 cites further Supreme Court of Canada decisions which support this purposive approach:

> "The purposive approach in construing human rights statutes has been followed by the Supreme Court of Canada in **Canadian National Railway Co. v. Bhinder**, [1985] 2 S.C.R. 561; **Action Travail des Femmes v. Canadian National Railway Co.**, [1987] 1 S.C.R. 1114; 76 N.R. 161, and **Brennan v. Canada and Robichaud**, [1987] 2 S.C.R. 84; 75 N.R. 303 . . . ."

The general objective of the *Act* is a fundamental one - that of fostering respect and equal treatment for all persons without regard to the individual's race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status or sex. Differential treatment of individuals on these grounds often results from prejudices that are deep rooted and ingrained in our society. Assisting individuals through education and public awareness to identify and recognize their prejudices and the unfairness of judging others on the basis of these prejudices is seen as one of the long term solutions to eliminating discrimination. At the same time, however, in addition to its objective of eliminating discriminatory conduct generally, human rights legislation has identified specific areas in which discriminatory conduct is prohibited. For example, Section 3 of the *Act* prohibits discrimination in the hiring or continuing employment of individuals; Section 4 prohibits discrimination in the rental and sale of housing and property; Section 5 prohibits discrimination with respect to any accommodation, services or facilities available to the public; Section 6 prohibits the publication of certain notices, signs, symbols or emblems that discriminate against any person; and, Section 7 prevents the exclusion of individuals on discriminatory grounds from professional associations or business or trade associations. The *Act*, with respect to these areas of discrimination, provides relief to those who have been the subject of the discrimination.

The courts have also now clearly established that it is the effect on the complainant and not the intent of the party accused of discriminating which is relevant in determining whether the human rights legislation has been breached. Mr. Justice McIntyre in the Simpson-Sears case, *supra*, at page 547 commented as follows:

> "It is the result or the effect of the action complained of which is significant. If it does, in fact, cause discrimination; if its

> effect is to impose on one person or group of persons obligations, penalties or restrictive conditions not imposed on other members of the community, it is discriminatory."

Mr. Justice McIntyre went on at pages 549-550 to explain the rationale for this conclusion as follows:

> "To take the narrower view and hold that intent is a required element of discrimination under the Code would seem to me to place a virtually insuperable barrier in the way of a complainant seeking a remedy. It would be extremely difficult in most circumstances to prove motive, and motive would be easy to cloak in the formation of rules which, though imposing equal standards, could create, as in Griggs v. Duke Power Co., 401 U.S. 424 (1971), injustice and discrimination by the equal treatment of those who are unequal (Dennis v. United States, 339 U.S. 162 (1950), at p. 184). Furthermore, as I have endeavoured to show, we are dealing here with consequences of conduct rather than with punishment for misbehaviour. In other words, we are considering what are essentially civil remedies. The proof of intent, a necessary requirement in our approach to criminal and punitive legislation, should not be a governing factor in construing human rights legislation aimed at the elimination of discrimination."

Issue

The issue to be determined by this Board of Inquiry is whether the School Board has discriminated against the Complainant and his children contrary to paragraph (b) of Subsection 5(1) of the *Act* which has been quoted earlier. Paragraph (a) of Subsection 5(1) prohibits discrimination with respect to access to accommodation, services or facilities that are available to the public. Paragraph (b) of Subsection 5(1) extends the prohibition regarding discrimination beyond mere denial of initial access to ensure that once accessed any aspect of the accommodation, services or facilities provided are not distinguishable on the basis of any of the discriminatory grounds identified in Subsection 5(1).

There are several preliminary questions relating to the applicability of Section 5 which must be addressed before any conclusions with respect to the merits of the complaint can be reached.

Whether the Board of Inquiry is the proper forum

An argument was raised that this Board of Inquiry is not the proper forum for the resolution of the issue before it. It was argued that it should be addressed through provisions in the Collective Agreement and the *Public Service Labour Relations Act*, R.S.N.B. 1973, c. P-25, that allow a school board to discipline a teacher for just cause and provide a grievance and adjudication process through which a teacher can challenge the appropriateness of disciplinary action. As referred to in the evidence, the Employer has taken disciplinary action against Malcolm Ross on at least two occasions for reasons partially related to the issue before this Board of Inquiry. It was argued that labour relations would become a nightmare if disputes between a school board and teachers could be brought before a board of inquiry as well as processed through the grievance and adjudication process.

It is possible that the actions of a teacher that have been the subject of disciplinary action by an employer could come before an adjudicator and at the same time be before a board of inquiry as a result of a complaint under human rights legislation. There is no guarantee that in such a case priority will be given by the School Board to the requirements and objectives of the *Human Rights Act*. In such cases it is clear that the primary jurisdiction to address complaints alleging breaches of the human rights legislation is that of a board of inquiry. The Collective Agreement itself in Article 12 makes reference to the supremacy of legislation over the Collective Agreement. This basic principle, that the parties to a collective agreement cannot contract out of human rights legislation, is also supported in the Supreme Court of Canada decision Re Winnipeg School Division No. 1 and Craton *et al.*

(1986), 21 D.L.R. (4th) 1. See also: Ontario Human Rights Commission *et al.* v. Borough of Etobicoke (1982), 40 N.R. 159 (S.C.C.).

Counsel for the Teachers' Federation expressed concern that to allow such matters to come before a board of inquiry would create a watershed of complaints and be very disruptive of the traditional manner of handling such issues through adjudication. There is no evidence to suggest that this would be the case. However, even if this was to occur, it would not allow a board of inquiry to relinquish its primary jurisdiction to deal with alleged violations of the *Act*.

Whether public education in the public schools is a service

One preliminary issue which has already been addressed by the courts is whether the public education system in the public schools of New Brunswick falls within the scope of Section 5 as being an accommodation, services or facilities available to the public. In its decision, *supra*, at page 202 the New Brunswick Court of Appeal concluded as follows:

> "When one gives to Subsection 5(1)of the Act a 'fair, large and liberal interpretation' as required by Section 17 of the *Interpretation Act*, R.S.N.B. 1973, c. I-13, it would, I think, undoubtedly bring public education within its purview. To hold otherwise would seem to me to frustrate the legislative intent of the *Human Rights Act* and its preamble and amount to a rejection of the broad purposive approach to the interpretation of anti-discrimination legislation adopted by the Supreme Court of Canada."

More specifically, at pages 203-204 the Court of Appeal concluded that public education provided under the *Schools Act*, R.S.N.B. 1973, c. S-5 is a service available to the public. This Board of Inquiry, therefore, has received direction from the New Brunswick Court of Appeal that Section 5 of the *Act* does apply to the provision of public educational services by the various school boards in the Province of New Brunswick.

Whether the School Board is a person for purposes of Section 5

A second preliminary issue that must be answered is whether the School Board is a person, as referred to in Section 5, that is capable of discriminating against other persons with respect to the accommodation, services or facilities available to the public. The definition of person as set out in the *Act* is not very helpful. It merely states that in addition to the extended meaning given to this word by the *Interpretation Act*, it includes an employment agency, an employer's organization and a trade union. The *Interpretation Act*, R.S.N.B. 1973, c. I-13, s. 38 defines "person" as follows:

> "'Person' or 'party' includes a corporation, partnership or society and the heirs, executors, administrators or other legal representatives of a person."

There would seem to be no doubt that a school board established under the *Schools Act* of New Brunswick is a person for purposes of the *Act*. It first of all may be fairly implied from the decision of the Court of Appeal, although it is not specifically addressed. To find otherwise would, of course, largely defeat the application of Section 5 to public education under the *Schools Act* as many decisions taken with respect to policy and programs that may result in discrimination are decisions by a school board rather than individuals.

The argument was raised by counsel that because the term "employer" is specifically referred to in Subsection 3(1) of the *Act* the legislators must not have intended for the School Board, as an employer, to be included in the term "person". This conclusion does not follow from a reading of Subsection 3(1) which states:

> "3(1) No employer, employers' organization or other person acting on behalf of an employer shall
>
> (a) refuse to employ or continue to employ any person, or
>
> (b) discriminate against any person in respect of employment or any term or condition of employment,
>
> because of race, color, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status or sex."

First of all, as Section 3 is specifically addressing discrimination in employment, it is logical that the "employer" should be specifically identified in this section. Secondly, the phrase "or other person" is used in conjunction with the term "employer" and implies that an employer does fall within the more general term "person" as used in other sections of the *Act* including Section 5. A similar conclusion was reached in relation to a similar argument raised with respect to the Newfoundland *Human Rights Code* in the case of Memorial University of Newfoundland v. Rose et al. (1990), 80 Nfld. & P.E.I.R. 97 (S.C.T.D.). In that case it was argued by Memorial University that an employer did not fall within the scope of Section 10.2(1) of the *Human Rights Code* because it was not a "person" as contemplated by that section. The court found the section did apply to the University.

Whether Complainant is a person for purposes of Section 5

A further preliminary question to be resolved is whether the Complainant, David Attis, having filed the complaint, falls within the category of persons whom Section 5 was intended to protect. The New Brunswick Court of Appeal, *supra*, at page 206, concluded that David Attis met the statutory standard in Section 17 to be accorded the legal status of Complainant. It further recognized that the major intent of his complaint was ". . . that the School Board has discriminated against him and his children." It seems clear that as a parent of children in School District 15 that his connection to and personal interest in the educational services provided by the School Board are closely linked to those of his children. As a parent he must assume certain legal and family responsibilities thus permitting a conclusion that he can claim to be an aggrieved person pursuant to Section 17 of the *Act*. David Attis is entitled to file the complaint not only in his own right but also on behalf of his children. Further, David Attis and his children are followers of the Jewish religion and are of Jewish ancestry, the two grounds on which they allege the discrimination was based.

Whether Section 6 restricts the scope of Section 5

Another argument of a preliminary nature challenged that Subsection 6(2) of the *Act* restricts the scope of Section 5 of the *Act*. Subsection 6(2) provides as follows:

> "6(2) Nothing in this section interferes with, restricts, or prohibits the free expression of opinions upon any subject by speech or in writing."

It was argued that Subsection 6(2) prevents the application of Section 5 to situations in which teachers are exercising their right to freely express their opinions as was Malcolm Ross through his published writings and public statements. This argument is rejected for several reasons. Firstly, it is noted that in Subsection 6(2) the reference is to nothing in "this section" prohibiting the free expression of opinion. If it was intended for this exemption clause to have broader application, it would have stated that nothing in "this *Act*" interferes, restricts or prohibits the free expression of opinions.

A review of decisions in other jurisdictions where there are similar provisions in human rights legislation supports the conclusion that equivalent provisions to Subsection 6(2) have not been applied beyond the scope of the section within which they were found. To apply Subsection 6(2) to other provisions of the *Act* would substantially restrict and limit the applicability of these sections contrary to the broad purposive approach to interpretation which the courts have adopted. If for example, to follow the argument, Subsection 6(2) applied to limit Subsection 5(1), a teacher would be free to express any opinion in class or elsewhere regardless of how discriminatory it might be as long as it could be classified as the free expression of opinion by that teacher. Such a conclusion could not have been intended by the legislature.

Whether Section 3 restricts the scope of Section 5

An argument was raised by counsel that to order the School Board to impose any restriction on Malcolm Ross' right to publish and express his ideas could be seen as a breach by the School Board of Subsection 3(1). Subsection 3(1), which has been quoted earlier, prohibits an employer from discriminating against any person in respect of employment because of religion. It should be noted that there was no evidence presented by Malcolm Ross that his religion requires him to write in the manner that he has written. His writings suggest that he is writing out of some religious conviction but there was no direct evidence of this and no argument made as to his beliefs meeting the tenets of any particular religion. However, in the event that the conclusion of this Board of Inquiry is incorrect as to there being insufficient evidence to prove that Malcolm Ross' writings are required by his religion, it is necessary to address the relationship between Section 3 and Section 5.

Both Section 3 and Section 5 provide protection against discrimination on the basis of religion. Therefore, it is possible that a situation could exist where the legitimate expression of a religious belief by one individual could breach another individual's right to be protected from discrimination on the basis of religion. In such a case it would be necessary to reach a reasonable balance between the two rights. In determining the balance, it is useful to consider the case of Boucher v. The King, [1951] S.C.R. 265, at page 277 where Rinfret J., in dissent, in considering the scope of freedom of expression stated:

> ". . . to interpret freedom as licence is a dangerous fallacy. Obviously pure criticism, or expression of opinion, however severe or extreme, is, I might almost say, to be invited. But, as was said elsewhere, 'there must be a point where restriction on individual freedom of expression is justified and required on the grounds of reason, or on the ground of the democratic process and the necessities of the present situation.' It should not be understood . . . that persons subject to Canadian jurisdiction 'can insist on their alleged unrestricted right to say what they please and when they please, utterly irrespective of the evil results which are often inevitable."

By analogy, it can also be argued that freedom of religion has its limitations. When religious beliefs take the form of an attack and condemnation of those following another religion, this passes well beyond a legitimate freedom of religion and the protection otherwise provided by the *Act*. In such a case, it would not be a question, therefore, of balancing individual rights.

Religious freedom is generally not viewed as entitling one to interfere with the rights of others. Dickson J. in the Taylor *et al.* v. Canadian Human Rights Commission *et al.* (1991), 75 D.L.R. (4th) 577, at page 594, summarizes the general international community approach to whether religious freedom extends to the right to denigrate the views of followers of another religion. He notes that the commitment of the international community to ". . . eradicate discrimination extends to the prohibition of the dissemination of ideas based on racial or religious superiority." The fact that freedom of religion does not permit one to attack and condemn another religion has been very clearly stated in those human rights cases that address religious harassment. The board of inquiry in the Suzanne Dufour *et al.* decision (1989), 10 C.H.R.R. D/6153 (Adell) dealt with this issue by stating as follows at paragraph 44243:

> "No matter how convinced anyone may be that he or she has a religious message that others should hear and heed, the Code prohibits him or her from pressing that message in the work place. A religiously militant employer is no more entitled to impose his or her version of religious enlightenment on employees than a sexually militant employer is entitled to impose his or her sexual ideas or wishes."

By analogy, it can be argued that the *Act* prohibits those involved in the provision of school facilities from imposing their religious messages on those using the services of the school system.

In the event of a true conflict between Section 3 and Section 5 and in the absence of any clear direction in the statute as to which section will prevail, it is necessary to consider the circumstances of the particular case in order to reach a reasonable balance between competing rights.

Whether an employer is liable for its employees' actions for purposes of Section 5

The complaint as phrased has two main elements. Firstly, it is alleged that Malcolm Ross, a teacher in School District 15, has through statements and published writings made racist, discriminatory and bigoted statements that have led to a poisoned environment for the Complainant and his children in the educational services provided by School District 15. Secondly, it is argued that the School Board in failing to properly discipline Malcolm Ross and in failing to address discriminatory incidents between students, and in other ways, has condoned Malcolm Ross' views and further poisoned the school environment.

The respondent, as identified on the complaint form, is the Board of School Trustees for School District 15. It is clear, however, from the description of the complaint that it is Malcolm Ross' activities that are the initial cause for this complaint. It was argued that the School Board as the named respondent, could not be held accountable for the actions of Malcolm Ross in that the principle of vicarious liability in tort is not applicable in the context of Section 5 of the *Act*. This would mean that, even though it might be found that Malcolm Ross as a teacher had discriminated against the Complainant, unless it could be shown that the School Board had in relation to its own independent actions also discriminated, the School Board could not be found to have violated Section 5 of the *Act*.

The issue of the liability of an employer for discriminatory acts of an employee appears to have been resolved in the Supreme Court of Canada decision Brennan v. Canada and Robichaud (1987), 75 N.R. 303. In that case the complainant alleged that she had been sexually harassed and discriminated against by her employer, the Department of National Defence, and her supervisor, who was the person who had sexually harassed her. Mr. Justice LaForest who wrote the decision for the Court defined the issue as whether or not an employer is responsible for the unauthorized discriminatory acts of its employees in the course of their employment under the *Canadian Human Rights Act*. Mr. Justice LaForest found that the intention of the federal human rights legislation was to make employers statutorily liable for the discriminatory acts of their employees and was not dependent upon theories of employer liability developed in the context of criminal or quasi-criminal conduct or upon vicarious liability as developed under the law of tort. Mr. Justice LaForest summarizes his conclusions at pages 314-315 as follows:

> "Not only would the remedial objectives of the Act be stultified if a narrower scheme of liability were fashioned; the educational objectives it embodies would concomitantly be vitiated. If, as was suggested by the Court of Appeal, society must wait for a Minister (who is already subject to public scrutiny) to discriminate before the Act comes into operation, how effective can the educational function of the Act be? More importantly, the interpretation I have proposed makes education begin in the workplace, in the micro-democracy of the work environment, rather than in society at large.
>
> Hence, I would conclude that the statute contemplates the imposition of liability on employers for all acts of their employees 'in the course of employment', interpreted in the purposive fashion outlined earlier as being in some way related or associated with the employment. It is unnecessary to attach any label to this type of liability; it is purely statutory. However, it serves a purpose somewhat similar to that of vicarious liability in tort, by placing responsibility for an organization on those who control it and are in a position to take effective remedial action to remove undesirable conditions." [Emphasis added.]

Mr. Justice LaForest reached his conclusions regarding employer liability based on the general rules of interpretation applicable to human rights legislation. There would appear to be no reason why his conclusions are not equally applicable in the interpretation of Section 5 of the New Brunswick *Act* such that the School Board can be held liable for the actions of its teachers.

Mr. Justice LeDain agreed with the decision of Mr. Justice LaForest and elaborated as follows at pages 317-318:

> "As held by the majority in the Federal Court of Appeal, the Act contemplates in ss. 4 and 4(2) that relief will be available against the person found to be engaging or to have engaged in a discriminatory practice, but I think it is an implication of the word 'indirectly' in s. 7 and the nature of the relief available under s. 41(2) that a discriminatory practice by an employee is to be considered to be a discriminatory practice by the employer as well, whether or not authorized or intended by the latter."

The term "indirectly" is also found in Section 5 and would, therefore, as in the federal legislation, imply the liability of an employer for the acts of its employees.

Obviously, if following an examination of the facts it is concluded that there has been a violation of Section 5 of the *Act* by the School Board through the actions of Malcolm Ross, any effective remedial action may have a detrimental effect on Malcolm Ross. Malcolm Ross was designated as a party to these proceedings because of this very concern. Counsel for Malcolm Ross at the commencement of the hearings of the Board of Inquiry acknowledged that he recognized the potential impact on his client and specifically mentioned the possibility of dismissal from employment. It is noted that Subsection 20(6.2) of the *Act* provides that the Board of Inquiry may make an order against any "party" found to have violated the *Act*.

Whether there was "discrimination" for purposes of Section 5

Many of the arguments raised by counsel challenging the scope of Section 5 have now been addressed. Resolution of these arguments did not require any detailed reference to the facts of the case. It remains to determine if the School Board has discriminated against the Complainant contrary to Section 5 based on the evidence presented.

Discrimination has been defined by Mr. Justice Vancise in the decision Re Saskatchewan Human Rights Commission and Canadian Odeon Theatres Ltd. (1985), 18 D.L.R. (4th) 93 as follows, at page 115:

> "Discrimination in a human rights context is exclusion, restriction or preference of treatment based on one of a number of protected characteristics the result of which is the prevention or impairment of the exercise of human rights and freedoms guaranteed in the code."

Section 5, it has been determined, guarantees individuals freedom from discrimination in educational services available to the public. The services provided in an educational facility are there for the general purpose of educating students. Education of students must be viewed in the broad context of including not only the formal curriculum but the more informal aspects of education that come through interchange and participation in the whole school environment. This would be in keeping with the broad purposive approach taken to the interpretation of human rights legislation. Section 5 requires that these services be available to all students without discrimination on the basis of religion and ancestry, amongst other grounds.

There is an onus on a complainant to show a *prima facie* effect that would be a logical result of a discriminatory action. In some cases the effect is not easily proven especially where the complainant is claiming an effect that is not readily discernible such as a loss of self-worth or dignity as may be the case in relation to Section 5. The determination as to whether there has been such an effect revolves around, firstly, an assessment of the credibility of the complainant's evidence. Secondly, where the complainant's evidence is credible, it is necessary to determine whether this effect is a reasonable reaction given the circumstances. In making this second determination it is necessary to place oneself in the position of a reasonable person in the circumstances. It is not, of course, easy for an individual who is a member of a majority to understand the impact that certain actions may have on a member of a minority and care must be taken to ensure that the assessment is done from the position of the minority member. Further, if one is addressing the situation of a child one must look at it in terms of a reasonable child, or, if addressing the situation of a father, one must look at it in terms of a reasonable father. Emphasis is placed on this particular aspect because some counsel suggested that the reactions of Yona Attis were simply the result of the imagination of a child or the irrational reaction of a child. If children generally react in what might be seen as an irrational manner as measured from an adult viewpoint, that is not relevant. What is relevant is whether the child's reaction would be a reasonable one for a child of that particular age.

If the evidence of the complainant is credible, with respect to the claimed effect, and the effect is a reasonable one, in relation to the circumstances of the complainant, one must then look to the party who has allegedly discriminated to provide evidence or argument as to any reason or cause for the actions, that have been called into question not being found in breach of the *Act*. This approach is summarized by Mr. Justice McIntyre in the Simpson-Sears case, *supra*, at page 558 as follows:

> "The complainant in proceedings before human rights tribunals must show a *prima facie* case of discrimination. A *prima facie* case in this context is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer."

Section 5 attempts to create a learning environment which is as free from discriminatory effects as is reasonably possible given the influence of factors beyond the control of those administering the educational system. In the present case it is claimed that the Complainant and his children, on the basis of their religion or ancestry, are provided with an inferior or less secure learning environment than is available to parents and children of other religions and ancestries. This less secure environment, the Complainant argues, has created apprehensions, fears, anger, isolation, and in a broader context has attacked the dignity and self-worth of the Complainant and his children. It has been claimed that the School Board and Malcolm Ross have created a "poisoned environment" in School District 15 for the Complainant and his children.

The evidence with respect to the effects of the alleged discriminatory actions on the Complainant and his children has been reviewed earlier in this decision. This Board of Inquiry has found the evidence of the Complainant, Yona Attis and Leigh Lampert, as to the effect of the impugned actions on them as a parent and students served by School District 15, to be very credible. It remains to be determined whether the alleged discriminatory actions could reasonably have caused these effects and, if so, whether there is reasonable cause to excuse the otherwise discriminatory actions. These actions will be considered in the following three categories:

(i) Malcolm Ross' actions on school property;

(ii) Malcolm Ross' actions while off-duty;

(iii) School Board's actions.

(i) Malcolm Ross' actions on school property

There was reference in the evidence to three incidents of Malcolm Ross having made discriminatory statements within the classroom or on school property. These incidents were: comments about black persons made by Malcolm Ross to his students in 1976; comments about blacks and the Rhodesian situation made by Malcolm Ross to a supply teacher in 1973; and, statements made by Malcolm Ross influencing students to avoid contact with a former Jewish teaching associate between 1974 and 1976.

These alleged incidents of 1976 and earlier cannot be viewed as central to this complaint. The difficulty in determining whether any weight should be given to this evidence is that it is hearsay and relates to incidents that occurred approximately twelve years prior to the filing of the complaint. The failure to produce evidence of any subsequent discriminatory comments by Malcolm Ross in the classroom suggests that such direct discriminatory comments were not made on a repetitive basis or at all. This conclusion is supported by the findings of the Review Committee Report of 1987 which amongst other things sought to determine whether Malcolm Ross had made discriminatory comments in the classroom. Although the report was flawed in some respects, this Board is prepared to accept its finding that there was no recent evidence of Malcolm Ross having made any discriminatory comments in his classroom. It is determined that no weight should be attached to the evidence of alleged incidents in the school prior to and including 1976. There is, therefore, no evidence of any direct classroom activity by Malcolm Ross on which to base a complaint under Section 5 of the *Act*.

(ii) Malcolm Ross' actions while off-duty

Most of the evidence presented related to alleged discriminatory actions by Malcolm Ross while off-duty which it is claimed had the effect of creating a poisoned learning environment within School District 15 for Jewish parents and students. This evidence consists largely of public statements and published writings by Malcolm Ross and resultant media coverage. It is not alleged that any of the public statements and published writings were carried out as part of Malcolm Ross' assigned school duties. However, it is to be noted that a teacher's off-duty conduct can impact on his or her assigned duties and thus is a relevant consideration.

An important factor to consider, in determining if the Complainant has been discriminated against by Malcolm Ross and the School Board, is the fact that teachers are role models for students whether a student is in a particular teacher's class or not. In addition to merely conveying curriculum information to children in the classroom, teachers play a much broader role in influencing children through their general demeanour in the classroom and through their off-duty lifestyle. This role model influence on students means that a teacher's off-duty conduct can fall within the scope of the employment relationship. While there is a reluctance to impose restrictions on the freedom of employees to live their independent lives when on their own time, the right to discipline employees for conduct while off-duty, when that conduct can be shown to have a negative influence on the employer's operation has been well established in legal precedent.

Several cases were referred to by counsel as authority for the right of a school board to discipline teachers for off-duty conduct related to their roles as teachers. In the case of Peterson v. British Columbia (School District No. 65 - Cowichan, [1988] B.C.J. No. 66 (January 18, 1988, unreported, B.C.C.A.), Madam Justice McLachlin, as she then was, stated:

> "The question is what is required to protect the school community from harm. In answering this question, it must be borne in mind that harm can take different forms. The risk that the misconduct may occur with resultant injury to students is one type of harm. The danger of students being influenced by inappropriate role models is another type of harm Loss of respect with a consequent dimunition (*sic*) of teaching effectiveness may cause harm to the school community. Yet another type of harm which may be perpetrated by retention of a teacher found guilty of misconduct, is a public loss of confidence in the educational system."

Further authority was provided in the case of Re Etobicoke Board of Education v. Ontario Secondary School Teachers' Federation (1982), 2 L.A.C. (3d) 265 where it was stated:

> "It is fundamental to the education process, as we see it, that teachers are seen not only to teach students, but to practice, within reasonable limits that which they teach. The grievor has been described as someone who exercises by force of his personality, considerable influence over his students. That influence flows at least partly from the special relationship created by his employment. It is vitally important that the result of that relationship and influence not be to suggest to students that a respected and influential teacher thinks participation in crime is excusable."

Although the above case dealt with criminal conduct by a teacher, its analysis of the effect on the teacher-student relationship of off-duty conduct is relevant to the present case.

Finally, the case of Abbotsford School District 34 Board of School Trustees v. Shewan and Shewan (1986), 70 B.C.L.R. 40 (B.C.S.C.) is useful for its review of several cases relating to teachers' off-duty conduct. Mr. Justice Bouck reached the following conclusion at page 64:

> "What do these decisions tell us? They say a teacher is an important member of the community who leads by example. He or she not only owes a duty of good behaviour to the school board as the employer but also to the local community at large and to the teaching profession. An appropriate standard of moral conduct or behaviour must be maintained both inside and outside the classroom."

There have been some concerns expressed by counsel that a finding that off-duty conduct by a teacher can result in a breach of Section 5 of the *Act* will be seen as an invitation to commence a "witch hunt" and that restricting a teacher's freedom to express opinions while off-duty will do much greater harm than any good that will result from protecting students and parents from discrimination. One might consider a situation where there are two teachers both with the same prejudicial views. In one case the teacher does not make the prejudicial views known and in the second case the teacher publicly proclaims the prejudicial views such that they become known generally in the school community. Neither teacher, however, in any way allows these prejudicial views to affect his or her classroom behaviour and conduct. In the case of the teacher who has not expressed the prejudicial views there is no discriminatory effect on any students within the school community because the teacher has not allowed the prejudicial views to influence his or her conduct in the classroom and students of minority groups about which the teacher may have prejudicial views have no knowledge of the teacher's viewpoint. This does not mean that the teacher's views are condoned, simply that they have not knowingly impacted on the school community and that there is no basis for a complaint under the *Act*. In the case of the teacher who has proclaimed the discriminatory views publicly the effect may adversely impact on the school community. It may raise fears and concerns of potential misconduct by the teacher in the classroom and, more importantly, it may be seen as a signal that others view these prejudicial views as acceptable. It may lead to a loss of dignity and self-esteem by those in the school community belonging to the minority group against whom the teacher is prejudiced.

The *Act* does not prohibit a person from thinking or holding prejudicial views. The *Act*, however, may affect the right of that person to be a teacher when those views are publicly expressed in a manner that impacts on the school community or if those views influence the treatment of students in the classroom by the teacher. While it may be argued that this approach may only result in such prejudices going "underground", it, at the very least, will reduce the scope of the discriminatory conduct by not allowing the prejudicial views to be seen as circulating and receiving support within the educational system.

As an aside, it is of interest to note that the Supreme Court of Canada in its recent decision, John Ross Taylor *et al.* v. Canadian Human Rights Commission *et al.* (*supra*), found that the provision of the *Canadian Human Rights Act*, prohibiting as a discriminatory practice the repeated telephonic communication of matter that is likely to expose persons to hatred or contempt on the basis of enumerated grounds of discrimination, was constitutional and a reasonable limit on the freedom of expression guaranteed in Section 2(b) of the *Canadian Charter of Rights and Freedoms*. The same reasoning as the court applied in that case would appear to be relevant in any challenge to the constitutionality of Section 5 of the New Brunswick *Act*. Chief Justice Dickson in his decision did make some reference to the hesitancy of the court to find legislation constitutional which interferes with private communication. At page 606-607 he stated as follows:

> "I do not disagree with the view that telephone conversations are usually intended to be private; it is surely reasonable for people to expect that these communications will not be intercepted by third persons. Moreover, in determining in Keegstra that the criminal prohibition of hate propaganda in s. 319(2) of the *Criminal Code* is not constitutionally overbroad, I relied to an extent upon the fact that private communications were not affected. The connection between s. 2(b) and privacy is thus not to be rashly dismissed, and I am open to the view that justifications for abrogating the freedom of expression are less easily envisioned where expressive activity is not intended to be public, in large part because the harms which might arise from the dissemination of meaning are usually minimized when communication takes place in private, but perhaps also because the freedoms of conscience, thought and belief are particularly engaged in a private setting."

Given this direction from the court it would seem that the private communication of a teacher in a setting unrelated to his or her role as a teacher, may not fall within the scope of Section 5. It is, of course, not necessary for this Board of Inquiry to decide this question.

The writings, publications and statements of Malcolm Ross have been identified earlier in this decision. Those considered most important for purposes of this decision include four books or pamphlets, a letter to the editor of The Miramichi Leader dated October 22, 1986 and a local television interview program in 1989. The four books or pamphlets are:

(1) Web of Deceit
(2) The Real Holocaust
(3) Spectre of Power
(4) Christianity vs. Judeo-Christianity

The evidence also established that there was substantial media coverage of these writings and statements by Malcolm Ross over a long period of time which contributed to his views becoming well known to the local community and beyond. A review of this media coverage indicates that it was generally accurate in reporting on the content of Malcolm Ross' views.

This Board of Inquiry has no hesitation in concluding that there are many references in these published writings and comments by Malcolm Ross which are *prima facie* discriminatory against persons of the Jewish faith and ancestry. It would be an impossible task to list every prejudicial view or discriminatory comment contained in his writings as they are innumerable and permeate his writings. These comments denigrate the faith and beliefs of Jews and call upon true Christians to not merely question the validity of Jewish beliefs and teachings but to hold those of the Jewish faith and ancestry in contempt as undermining freedom, democracy and Christian beliefs and values. Malcolm Ross identifies Judaism as the enemy and calls on all Christians to join the battle.

Malcolm Ross has used the technique in his writings of quoting other authors who have made derogatory comments about Jews and Judaism. He intertwines these derogatory quotes with his own comments in a way such that he must reasonably be seen as adopting the views expressed in them as his own. Throughout his books, Malcolm Ross continuously alleges that the Christian faith and way of life are under attack by an international conspiracy in which the leaders of Jewry are prominent. The views of Malcolm Ross are most succinctly stated in the letter to the editor of The Miramichi Leader referred to earlier. He refers to the international conspiracy in this letter as follows:

> "How then could these capitalists support communism?
>
> These questions troubled me, and several years after leaving university I began to hear about an 'international conspiracy'. Most disturbing of all, this 'conspiracy' seemed to be headed by those that many Christians held to be God's 'Chosen People', the Jews?"

Malcolm Ross goes on to speak very highly of several authors, such as Martin Luther, whom he argues support the international conspiracy theory. He states in the newspaper article:

> "My work is not 'disguised' as Christian, as Dr. Israeli insists, but is completely faithful to the spirit of the Christian faith from earliest Christian times to at least our 'post-auchwitz Christian' church when the Jewish infiltration of top offices in the Vatican and elsewhere led to the sorry state of the Christian church and Christian society today.
>
> It is indeed the 'Judeo-Christian society' our society has fought against for years, a society under the control of a Jewish controled mass media, Jewish controled international finance, and now a Jewish-dominated 'Christianity' where every 'evangelist' who appears on our television spews out the same old line 'The Jews are God's Chosen People so we must support them no matter what they do.' . . . I believe many of the evils in our land stem from the fact that we have denied the kingship of Christ in our society and have allowed those 'who hate the Lord' to rule over us."

The intensity with which Malcolm Ross attacks the followers of Judaism is clearly evident in the following quotation from his letter:

> "My whole purpose in writing and publishing is to exult Jesus Christ and to inform Christians about the great Satanic movement which is trying to destroy our Christian faith and civilization."

Further on in the letter he quotes what he claims is biblical support for claiming that Jews are the synagogue of Satan. His encouragement of others to condemn the Jews and throw off the "yoke of Jewish domination" is assisted through referring to Judaism as teaching that ". . . Jesus Christ is a bastard, a lewd deceiver, a false prophet who is burning in Hell." He further claims that Judaism teaches that the Virgin Mary is a whore. Malcolm Ross concludes his articles by indicating that he intends to continue his research, writing and publishing.

These same themes are constantly repeated in his writings which attack the Jewish religion. Whether these attacks fall within the scope of hate literature for the purposes of the *Criminal Code* is not a question that can be determined by this Board of Inquiry. This Board of Inquiry has been charged with determining whether these attacks by a school teacher have led to discrimination in the provision of services by the School Board.

A television interview which Malcolm Ross gave in 1989 gives further insight into his motives and purpose for writing. This Board of Inquiry agrees with the characterization which the School Board gave to the interview when it ordered Malcolm Ross to refrain from publicly assailing and denouncing another religion. The School Board went on to state that in its view ". . . the climate created by this aggressive approach creates hostility that permeates and interferes with the desired tolerance required by the school system to show respect for the rights of all students and their families to practice their religious faith." This Board of Inquiry has no hesitation in concluding that the public statements and writings of Malcolm Ross have continually over many years contributed to the creation of a poisoned environment within School District 15 which has greatly interfered with the educational services provided to the Complainant and his children.

The writings and comments of Malcolm Ross cannot be categorized as falling within the scope of scholarly discussion which might remove them from the scope of Section 5. The materials are not expressed in a fashion that objectively summarizes findings and conclusions or propositions. While the writings may have involved some substantial research, Malcolm Ross' primary purpose is clearly to attack the truthfulness, integrity, dignity and motives of Jewish persons rather than the presentation of scholarly research. As an example, much reference was made in evidence to the comments in Malcolm Ross' books regarding the numbers killed in the Jewish Holocaust. The facts as to the actual numbers killed was not questioned in a scholarly fashion but rather portrayed in a fashion so as to buttress Malcolm Ross' position that there is a Jewish conspiracy to take over the world.

There was also an argument raised that Malcolm Ross was attacking Zionism rather than Judaism and, therefore, that his writings fell outside of the scope of discrimination on the basis of religion or ancestry. A review of his writings makes it clear that he is attacking Judaism as well as Zionism. The letter to the editor of The Miramichi Leader written by Malcolm Ross, which has been quoted extensively, makes this very clear. Nor can the argument that Malcolm Ross has stated occasionally in his writings that not all Jews are part of the conspiracy be seen to eliminate their discriminatory effect.

On a review of all of the evidence and circumstances surrounding Malcolm Ross' off-duty conduct in relation to his published statements and writings, it is the conclusion of this Board of Inquiry, on the balance of probabilities, that the actions of Malcolm Ross have violated Subsection 5(1) of the *Act* and there is no reasonable cause to excuse the discriminatory effect of these actions.

(iii) School Board's actions

The conclusion was reached earlier in this decision that the *Act* imposes on the School Board, as the employer, liability for any breaches of Section 5 by its teachers. A finding, therefore, that Malcolm Ross' actions resulted in discrimination against the Complainant in respect to educational services in School District 15, is a finding that the School Board is in breach of Section 5.

There is another aspect of the complaint, however, which must be considered. It has been argued by the Complainant that the School Board discriminated directly against him and his children by failing to take appropriate disciplinary action against Malcolm Ross. With respect to this failure and other actions of the School Board or its individual members, the Complainant has argued that the School Board must be seen to have condoned the views of Malcolm Ross. Further, it was claimed that the School Board failed to properly control discriminatory actions by students against the Complainant's daughter and other Jewish children. The responsibility of the School Board for the overall management and control of the school environment within District 15 and for the direction and control of teachers in the District was not contested by the School Board. This responsibility is acknowledged in the *Schools Act* and the Collective Agreement.

For ease of review, the School Board's actions will be subdivided into the following categories: disciplining of Malcolm Ross; Review Committee Report; failure to pass two motions; control of discriminatory incidents in the school environment; and, reaction to the Human Rights Commission.

The most striking impression from a review of the School Board's handling of the Malcolm Ross issue is the reluctance of the School Board to become involved and the slowness of its response. Malcolm Ross published his first book in 1978 and no disciplinary action took place until March of 1988 although his classes were monitored on a fairly regular basis and a Review Committee was established in 1987. In the interim there were other publications, letters to the editor, and numerous media reports regarding the matter. The School Board in its evidence pointed to several factors to explain what appears to be an inordinate delay and unwillingness to fulfill its mandate as a school board to provide leadership in dealing with this conflict. The School Board pointed to letters and comments from the provincial Government, as well as the Human Rights Commission itself, stressing the right of Malcolm Ross to freedom of speech in his private life. Reference was also made to the numerous reviews and delays by the various Attorneys-General in deciding whether to prosecute Malcolm Ross under the hate literature provisions of the *Criminal Code*. Further, reference was made to the absence of any evidence that Malcolm Ross was expressing his views in the classroom. As well, Malcolm Ross was viewed as a very competent and capable teacher. Finally, it was argued on behalf of the School Board that the Complainant had failed to direct his concerns to the School Board and, therefore, it had been unable to deal with them.

On reviewing the evidence it appears that some of these reasons have validity. The School Board was receiving conflicting signals from the provincial Government and the Human Rights Commission suggesting that Malcolm Ross' right of freedom of expression prevented the School Board from taking any disciplinary action against him for comments made while off-duty. It was only in March of 1988 that the School Board received a letter from Clyde Spinney, counsel to the School Board at that time, outlining the legal precedent that supported the right of the School Board to control the off-duty conduct of employees when it adversely affects the employer. This legal precedent had been well developed for many years and it is difficult to understand why it was only in 1988 that the School Board had this matter clarified. The case Fraser v. Public Service Staff Relations Board (1982), 45 N.R. 25 was decided by the Federal Court of Appeal in November 1982 and upheld by the Supreme Court of Canada as reported in (1986), 63 N.R. 161. This case established the right of an employer to discipline an employee for off-duty conduct. The Fraser case refers to public servants being duty bound to exercise restraint in making public comments critical of their employer, the government, which would impair their usefulness as employees. The court held that, although direct evidence of performance was usually necessary, impairment could be inferred where the civil servant's occupation was both important and sensitive and the substance, form and context of the criticism was extreme. In the present case, it has been found that there was in fact evidence of impairment of Malcolm Ross' ability to perform his employment duties. As well, it is noted that Malcolm Ross' criticism of the Jewish religion was extreme.

There is no evidence that the School Board deliberately declined to take action with the knowledge that it had the authority to do so. However, viewed from the Complainant's position it no doubt created the impression that the School Board was unsympathetic to the effect of Malcolm Ross' writings on him and his children. The reprimand and restraint order issued in March 1988 as disciplinary action against Malcolm Ross by the School Board referred to the views expressed in his writings as being controversial and causing difficulties for the School Board. The Complainant has criticized the Board for referring to Malcolm Ross' writings as controversial rather than discriminatory. This Board of Inquiry has concluded that in taking disciplinary action it was not necessary for the School Board to refer to Malcolm Ross' writings as discriminatory. An employer, in imposing disciplinary action, will normally characterize the reasons for disciplinary action as widely as possible so as to avoid any relevant actions being excluded as a basis for the disciplinary action.

It appears that the disciplinary action taken in March 1988 was successful in restraining Malcolm Ross from further publication of his views. In September 1989, however, the School Board removed the record of disciplinary action from his file. At the same time, the School Board forwarded to Malcolm Ross a copy of its newly developed Policy 5006 which was intended to make clear the School Board's policy with respect to the role of teachers in providing an acceptable learning environment that teaches respect for individual rights and tolerance for individual differences. It was approximately two months after the removal of the record of discipline in September 1989 that Malcolm Ross appeared on a local television program and once again expressed views which have been found to be of a discriminatory nature.

Given Malcolm Ross' television appearance and the removal of the record of disciplinary action two months earlier, one can see why the Complainant questioned the School Board's voluntary removal of the record with respect to a situation that had created such controversy for so many years and when its disciplinary action was apparently working quite successfully. It must be appreciated, however, that the School Board had sent a rather strongly worded letter to Malcolm Ross, together with a copy of Policy 5006, making it very clear as to what the intent of this policy was when the School Board removed the record of disciplinary action.

Given the above, it is difficult to understand why on December 1, 1989 the School Board merely gave Malcolm Ross a severe reprimand as opposed to terminating his employment. The previous disciplinary action in 1988, one might argue, was taken when there was no policy in place and Malcolm Ross may have thought that he had a right to speak out freely while off-duty. His comments while appearing on the television program, however, were clearly in violation of School Board policy and direction.

The School Board determined what disciplinary action to take in response to Malcolm Ross' television appearance at a Special Board meeting on November 30, 1989. This was the same day that the Supreme Court of Canada denied Malcolm Ross' leave to appeal from the decision of the New Brunswick Court of Appeal respecting the challenge by the School Board and other parties to the jurisdiction of this Board of Inquiry to proceed. It is possible that at this point in time the School Board anticipated that the Board of Inquiry would be proceeding and may have determined that it was best not to terminate Malcolm Ross' employment pending further direction and comment from this Board of Inquiry. However, if this was so, the School Board neither publicly indicated that this was the reason for not imposing more serious disciplinary action nor was any evidence presented to this Board of Inquiry to this effect.

In summary, it was the apparent reluctance of the School Board to take disciplinary action prior to 1988 that can be seen as creating the effect for the Complainant that the School Board was in fact supporting and condoning Malcolm Ross' views. It certainly is no excuse for the School Board to say that the Complainant had not brought his concerns directly to the School Board. The publicity which this matter had received over many years meant that the School Board was very much aware of the situation in the community. In such situations it is not sufficient for a school board to take a passive role. A school board has a duty to maintain a positive school environment for all persons served by it and it must be ever vigilant of anything that might interfere with this duty.

The School Board in 1987 established a Review Committee to review the possible impact of the private actions of Malcolm Ross upon the learning environment in school programs. Ernest Hodgson in his evidence was very critical of this Committee. Ernest Hodgson's evidence, as summarized earlier, was critical of the composition of the Review Committee, the mandate which the Committee adopted and the manner in which the Committee interviewed individuals and gathered data. This Board of Inquiry has concluded that many things could have been done to improve the operation of the Committee. It does appreciate, however, that in these matters there are financial considerations that sometimes restrict the ability of a school board to create the "perfect" committee. To the extent that the School Board was not attempting to hold out the findings of the Committee as anything more than an internal examination, so as to assist it in dealing with the issue, the School Board cannot be faulted in terms of the structure of the Committee.

The Board, however, is in agreement with Ernest Hodgson that the Review Committee's report did not address the questions which it should have. The Review Committee interpreted its mandate as limited to an examination of the human relations of the school community at the Magnetic Hill School. The Committee appeared to concentrate its information gathering on the question of whether Malcolm Ross had ever stated his views in class or whether students could recall talking about his views with other students outside of the classroom. Although the larger school community in School District 15 may have been given an opportunity to speak to the Review Committee, if they had so requested, the Review Committee did not actively encourage the wider community to do so. The Review Committee also appeared to ignore the input that it did receive from Jewish members of the school community in School District 15 and, particularly, did not appear at all to address the very well prepared brief submitted by the Atlantic Jewish Council. It very much gave the impression, as a committee, of being an ostrich with its head in the sand. The School Board, in accepting the report, failed to appreciate the necessity of addressing the larger picture and the difficult issue of assessing the subtle forms which discrimination can take. The failure of the School Board to be more comprehensive and understanding in attempting to deal with the real issues cannot help but have made the Complainant feel that the School Board was not sincere in its attempts to deal with the issue. Further, this failure reinforced the Complainant's belief that, because the issue was one which affected such a small minority of the school community, the School Board did not wish to deal with it.

Evidence was presented with respect to two motions before the School Board which failed to pass for want of a seconder. This Board of Inquiry has reviewed the circumstances surrounding those motions and has concluded that the evidence, as to reasons for the motions not passing, is insufficient to warrant finding the actions were discriminatory.

Although there were many incidents related by Yona Attis and Leigh Lampert in which they felt singled out and made to feel different, the evidence indicated that the number of students denigrating them because of their religious affiliation was not many. Although there was no evidence that any of the students making anti-Jewish remarks were directly influenced by any of Malcolm Ross' teachings, given the high degree of publicity surrounding Malcolm Ross' publications it would be reasonable to anticipate that his writings were a factor influencing some discriminatory conduct by the students. With respect to some of these situations some teachers and principals involved were helpful in providing support and assistance. In other situations the evidence indicated that teachers and principals did not appreciate the distress that the situation was causing or did not handle it in the best manner possible. Although keeping Yona Attis after school for ten minutes so that she could walk home alone undisturbed might have been an acceptable temporary solution to deal with the situation, a more appropriate response would have been to establish an active program of identification of such problems and provision of assistance to the teacher most closely involved in trying to resolve the problem.

This Board of Inquiry does not hold itself out as an expert regarding the best way in which to address discriminatory situations such as were described by Yona Attis and Leigh Lampert. It would simply recommend that qualified people be brought together to address the problem. Again, there is an obligation on the School Board to take a proactive approach to search out these situations and ensure that they are not allowed to go unnoticed because of the small minority of students affected by them. It is the School Board's obligation to ensure that teachers have the resources and the assistance to deal with the problem. This Board is not suggesting that it is possible to prevent every situation in which minority students are attacked on the basis of their minority affiliations. The *Act*, however, has given clear direction that within the school community there is an obligation to work towards the creation of an environment in which students of all backgrounds will feel welcomed and equal.

The final aspect of the School Board's conduct raised before this Board of Inquiry was the School Board's reaction to the investigation by the Commission and the Commission's attempt to resolve the dispute as required by the *Act*. The School Board gave the appearance of reacting very defensively to the investigation. It has made the point that it felt an obligation to protect the privacy of a teacher's file and of the fact that certain students were receiving remedial assistance. It also strongly resisted the release of the Review Committee report to the Commission on the basis that some of the information contained in it was confidential. Rather than attempt to work out some imaginative solutions to these concerns, the School Board appeared to be actively resisting the investigation. Its approach again manifested the attitude that if improper conduct was brought to its attention it would certainly deal with it but it was not prepared to aggressively seek out and resolve the problems.

This Board of Inquiry would, having reviewed all of the evidence, conclude on the balance of probabilities that the School Board has discriminated against the Complainant contrary to Subsection 5(1) of the *Act* and there is no reasonable cause to excuse the discriminatory effect. The reasons have been summarized above and a reading of these will indicate that generally this Board found no evidence of any intent to discriminate. The effect, however, on the Complainant and his children is one which a reasonable person would anticipate resulting from the actions of the School Board particularly the failure to address the Malcolm Ross issue in any meaningful way prior to 1988.

V. REMEDY

This Board of Inquiry has, on the balance of probabilities, determined that the School Board has violated Subsection 5(1) of the *Act*. It has violated the *Act* directly, through its own actions or lack thereof, as well as indirectly, through the actions of Malcolm Ross, a teacher employed by the School Board.

Mr. Justice McIntyre of the Supreme Court of Canada in the Simpson-Sears case (*supra*) makes it clear that the objective of human rights legislation is to remove discrimination and to provide relief for the victims of that discrimination. Human rights legislation is not primarily intended to punish those who discriminate. Mr. Justice McIntyre states this clearly at page 547:

> "The Code aims at the removal of discrimination. This is to state the obvious. Its main approach, however, is not to punish the discriminator, but rather to provide relief for the victims of discrimination."

The remedy provided by this Board of Inquiry will, firstly, identify measures which the School Board and the Department of Education can take to avoid discriminatory situations developing in the school environment. Secondly, the remedy provided will address the specific steps which must be taken to remedy the discriminatory situation in School District 15 created through the writings and publications of Malcolm Ross. It is with respect to this latter remedy that it is difficult to provide relief without at the same time being seen to punish the discriminator. In developing its remedies this Board of Inquiry has been very conscious of the direction given by Mr. Justice McIntyre, as quoted above, that the emphasis should be on the provision of relief and not the punishment of those discriminating. In this case, however, it has been determined impossible to provide a relief that does not have punitive aspects to it.

There is an onus on all those involved in the delivery of educational services within the Province of New Brunswick, and within School District 15 in particular, to make it clear to all students, at all levels, that the school environment is one where they are all equal and welcome without discrimination. There are many steps which can be taken to accomplish this goal. The School Board and the Department of Education in recent years have already taken some positive steps. The Department of Education in August 1989 issued a ministerial statement on "Multicultural/Human Rights Education" which proposes many excellent initiatives both within the Department of Education and at the School Board level to promote the "essential values of tolerance, understanding and respect for all persons". The initiatives are summarized in the ministerial statement as follows:

> "3.1 Every school board is encouraged to develop a policy statement based on the guiding principles. To assist school boards with this task, the Department of Education will provide consultation on major policy issues in this area and provide opportunities to discuss programs and practices that can be implemented in our schools.
>
> 3.2 Information sessions will be held for curriculum development groups to instruct them in the use of guidelines to detect bias and stereotyping in learning materials.
>
> 3.3 The Department, in cooperation with school districts, will develop and make available an information package for promoting and improving multicultural/human rights education.
>
> 3.4 The Department will continue to identify and/or develop materials that provide a balanced treatment of gender, cultural, racial, ethnic and religious beliefs and values.
>
> 3.5 The Department will encourage school boards to consult with multicultural community groups on a regular basis to ensure their active participation in school programs and activities.
>
> 3.6 The Department will establish a process to assess the progress made toward the full implementation of multicultural/human rights education policy.
>
> 3.7 School Boards will be expected to take appropriate action when multicultural/human rights principles are undermined by staff, students or visitors to the school.
>
> 3.8 The Department will support the ongoing commitment to multicultural/human rights education through professional development activities, its regular publications, and by means of press releases at appropriate times during the school year."

The Department has already developed for the school curriculum an addition to its modern history courses entitled "The Holocaust" which has provided a positive remedy for the Complainant in the present case.

Although this Board of Inquiry finds the proposed initiatives within the ministerial statement very comprehensive, a strong commitment to implement these initiatives is required. Often in bureaucratic institutions commitment and focus are hard to maintain. There should, therefore, be an annual review process established within the Department of Education to set goals and assess progress made in the attainment of these goals. Further, to ensure that the initiatives are having an effect at the local level this annual review process should involve an appraisal of the state of race relations in the school environment. In relation to this appraisal, the Department of Education should establish specific methods and procedures to identify and respond to any harassment or discrimination.

School District 15, in 1988, adopted a policy which specifically acknowledged the obligation of the School Board and its entire staff to establish a "learning environment that teaches respect for individual rights and tolerance for individual differences." Such a policy is essential not only in terms of it being an express commitment to the community served by the School Board but also in terms of providing direction and guidance to teachers. As such, it ensures that stringent disciplinary action can be taken for any blatant abuse of such a policy by a teacher. Steps should be taken by the Department of Education to encourage all school boards to implement such a policy.

In relation to this, it is recommended that the Department of Education consider a review of the *Schools Act* to determine the appropriateness of defining within it a clear statement as to the level of professional conduct expected of teachers. Although it is not suggested that the front line responsibility for enforcement of employment obligations should be removed from the school boards, such a provision in the *Schools Act* could serve to ensure that some central control rests with the Department of Education to maintain minimum provincial standards. Such a review of the *Schools Act* should include consultation with the New Brunswick Teachers' Association which is responsible for monitoring the professional obligations of its members.

This Board of Inquiry has carefully reviewed the writings and statements of Malcolm Ross and his reaction to directions from the School Board to refrain from such writings and publications. Malcolm Ross' commitment to his beliefs and intent to publicly proclaim these beliefs through his writings, even following clear direction from the School Board, is obvious. His views have been categorized as extreme in terms of the critical and vindictive manner in which they attack those of the Jewish religion and ancestry. The role of this Board of Inquiry has been to determine whether Section 5 of the *Act* has been violated and, if so, what is necessary to remedy that violation. Section 5 strives for a discrimination-free environment in the school system so that everyone within School District 15 can enjoy the public educational services provided by the School Board without discrimination.

Malcolm Ross, by his writings and his continued attacks, has impaired his ability as a teacher and cannot be allowed to remain in that position if a discrimination-free environment is to exist. It is not a situation that can be corrected through an apology and renunciation by Malcolm Ross of his views given the very strong stand he has taken. It is not a situation that can be corrected through continual monitoring of Malcolm Ross' classroom as the influence of a teacher on students is so much more complex than the formal content of any subject matter taught by the teacher. It is not a situation that can be corrected through asking the School Board not to place any Jewish students in Malcolm Ross' class or in the Magnetic Hill School where he teaches as accessibility to schools within a public school system cannot be restricted on the basis of religion or ancestry. It is not a situation which can be remedied simply through monetary compensation to the Complainant for the pain and suffering that has resulted.

The only viable solution is that Malcolm Ross must be removed from the classroom. The Complainant has indicated that he would not be adverse to Malcolm Ross being given a non-teaching position within School District 15. There has been no evidence presented as to the availability of such positions in School District 15 and whether the School Board would consider Malcolm Ross to be properly qualified to fill any such position. If there are such non-teaching positions available, in which student contact, if any, is minimal, it would be a means of providing a remedy while being no more punitive to the discriminator than is necessary. Should Malcolm Ross be placed in such a non-teaching position, his continued employment would, of course, be dependent upon him not publishing, writing or selling, directly or indirectly, any publication that mentions a Jewish or Zionist conspiracy or which can be seen as an attack on Judaism and its followers. This prohibition would include any of the books and writings mentioned in this decision which have been written by Malcolm Ross. The placement of Malcolm Ross in such a position by the School Board should not be viewed as breaching any term of any collective agreement covering such a position to which the School Board is a party.

Order

It is, therefore, ordered as follows:

(1) That the Department of Education:

(a) establish an annual review process to set goals and to assess progress in the implementation of the initiatives set out in the Ministerial Statement on "Multicultural/Human Rights Education";

(b) develop in collaboration with school trustees and teachers a system of periodic appraisals of the overall quality of race relations in the school environment and procedures for responding to any discriminatory situations identified;

(c) encourage all school boards to implement a policy which will clearly establish the commitment of each board and teachers within that board to teach respect for individual rights and tolerance of differences; and,

(d) review the *Schools Act* in consultation with the New Brunswick Teachers' Association to determine whether it would be appropriate to define within it a clear statement as to the level of professional conduct expected of teachers in the Province of New Brunswick.

(2) That the School Board:

(a) immediately place Malcolm Ross on a leave of absence without pay for a period of eighteen months;

(b) appoint Malcolm Ross to a non-teaching position if, within the period of time that Malcolm Ross is on leave of absence without pay, a non-teaching position becomes available in School District 15 for which Malcolm Ross is qualified. The position shall be offered to him on terms and at a salary consistent with the position. At such time as Malcolm Ross accepts employment in a non-teaching position his leave of absence without pay shall end.

(c) terminate Malcolm Ross' employment at the end of the eighteen month leave of absence without pay if, in the interim, he has not been offered and accepted a non-teaching position.

(d) terminate Malcolm Ross' employment with the School Board immediately if, at any time during the eighteen month leave of absence or if at any time during his employment in a non-teaching position, he:

> (i) publishes or writes for the purpose of publication, anything that mentions a Jewish or Zionist conspiracy, or attacks followers of the Jewish religion, or
>
> (ii) publishes, sells or distributes any of the following publications, directly or indirectly:
>
> - Web of Deceit
> - The Real Holocaust (The Attack on Unborn Children and Life Itself)
> - Spectre of Power
> - Christianity vs. Judeo-Christianity (The Battle for Truth)

This Board of Inquiry reserves jurisdiction with respect to any difficulties that may arise in the implementation of its Award.

DATED this 28th day of August 1991.

Brian D Bruce

Brian D. Bruce
Board of Inquiry